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PRECEDENTS IN CONVEYANCING

SECOND EDITION.

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VOL. II.

PART II.

LONDON:

SWEET AND MAXWELL, LIMITED,

3, CHANCERY LANE, W.C.

1926.

MIDDLE

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RELEASES.

PRELIMINARY NOTE.

As to releases generally, see Elph. Introd. 7th ed. 620, and Encyclop. Prec. 2nd ed. (1925), 291 *et seq.*, and notes to the following precedents.

A person to whom any power is given may by deed release or contract not to exercise it (sect. 155 of the Law of Property Act, 1925).

As to release of part of land affected from a judgment, see sect. 71 of the Law of Property Act, 1925.

The following provision is made by the schedule to the Stamp Act, 1891, with regard to releases:— Stamps.

	£	*s.*	*d.*
RELEASE or RENUNCIATION of any property, or of any right or interest in any property—			
Upon a sale. See "*Conveyance on Sale.*"			
By way of security. See "*Mortgage,*" &c.			
In any other case	0	10	0

PRECEDENTS.

I. MUTUAL RELEASE *of all* CLAIMS *by* TWO PERSONS (*a*).

THIS RELEASE (*b*) is made the —— day of ——, 19—, BETWEEN [A. B.], of, &c., of the one part, and [C. D.], of, &c., of the other part, WITNESSETH, that each of them the said [A. B.] and [C. D.] hereby releases the other of them, and their personal representatives, and his and their estates and effects, from all sums of money, accounts, actions, proceedings, claims, Parties. Release.

(*a*) A release without recitals is of little value, and only extends to such acts or things as the parties had in their minds at the time of making the release; hence, it is almost invariably wiser to fully recite every fact bearing on the matter: Encyclop. Prec. 293; and see *Payler* v. *Homersham*, 4 M. & S. 423. In certain exceptional cases the form given above may, however, be useful.

(*b*) Stamp, 10*s*.

I. RELEASE BY TWO PERSONS.

and demands whatsoever, for or by reason or in respect of any act, cause, matter, or thing whatsoever, up to the day of the date of these presents. [PROVIDED ALWAYS, that nothing herein contained shall extend to release the said [C. D.], or his personal representatives, or his or their estates or effects, from any claim or demand which the said [A. B.], as executor of the will of [E. F.], of, &c., deceased, now has, or hereafter may have against the said [C. D.] in respect of any accounts or transactions between the said [C. D.] and the said [E. F.], deceased.]

Proviso that release shall not extend to claims of a releasor as executor (*c*).

IN WITNESS, &c.

II. MUTUAL RELEASE *of all* CLAIMS *by* THREE PERSONS, *where a particular* TRANSACTION *is* RECITED.

THIS RELEASE (*d*) is made the —— day of ——, 19—, BETWEEN [A. B.], of, &c., of the first part; [C. D.], of, &c., of the second part; and [E. F.], of, &c., of the third part: WHEREAS the parties hereto have recently been jointly engaged and interested in an undertaking for the construction of, &c. [*describe nature of undertaking*], under an agreement dated, &c., and made between the said [A. B.], of the one part, and [X. Y.], of, &c., of the other part, and several questions have arisen as to the rights and liabilities of the parties hereto as between themselves in respect of the said undertaking: AND WHEREAS, for the settlement of such questions, it was agreed that the costs and expenses of the said undertaking should be borne and paid by the parties hereto in the shares and proportions following, that is to say [three equal sixth] shares thereof by the said [A. B.], [two equal sixth] shares thereof by the said [C. D.], and the remaining [one equal sixth] share thereof by the said [E. F.], and that they should share the profits of the said undertaking (if any) in the same proportions: AND WHEREAS an account of the receipts and expenditure in respect of the said undertaking is set forth in the schedule hereto, whereby it appears that the net profits divisible in the proportions agreed upon as aforesaid amounted to [600*l.*] and accordingly such

Parties.

Recitals: of a particular transaction between the parties;

of agreement to pay expenses and divide profits in certain proportions;

of ascertained amount of net profits divisible;

(*c*) This proviso may be inserted, if it is intended that this release shall not extend to claims by one of the parties against the other, in a representative character.

(*d*) Stamp, 10*s*.

II. RELEASE IN RESPECT OF PARTICULAR TRANSACTION.

amount has been distributed among and received by the several parties hereto in the proportions or sums following, that is to say, the sum of [300*l.*] by the said [A. B.], the sum of [200*l.*] by the said [C. D.], and the sum of [100*l.*] by the said [E. F.], as the parties hereto respectively acknowledge: AND WHEREAS there have been divers other accounts, dealings, and transactions between the parties hereto, all of which have been adjusted and settled: NOW THIS DEED WITNESSETH that, in consideration of the premises, each of them the said [A. B.], [C. D.], and [E. F.] doth, and every two of them do hereby release the others, and each of the others of them, and their and his personal representatives, estates and effects, from all sums of money, accounts, actions, proceedings, claims and demands whatsoever, which any one or any two of them the said [A. B.], [C. D.], and [E. F.] now has or at any time heretofore has had or may have had against the others or either of the others of them, for or on account or in respect of the said undertaking, and for or by reason or in respect of any other transaction, dealing, act, cause, matter, or thing whatsoever, to the date of these presents.

of other transactions.

Release.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

III. RELEASE *from* CREDITOR *to* DEBTOR *on* RECEIVING *a* SUM *of* MONEY *in* SATISFACTION *of* DISPUTED CLAIMS.

THIS RELEASE (*e*) is made the —— day of ——, 19—, BETWEEN [*releasor*], of, &c. (hereinafter called "the creditor"), of the one part, and [*releasee*], of, &c. (hereinafter called "the debtor"), of the other part: WHEREAS the creditor has from time to time, during several years past, advanced various sums of money to or on account of the debtor; and certain other dealings and transactions have taken place between them, by means whereof the debtor became indebted to the creditor in a considerable sum of money: AND WHEREAS the creditor made certain claims and demands against the debtor, in respect whereof disputes and diffe-

Parties.

Recitals: of dealings between the parties;

disputed claims;

(*e*) Stamp, 10*s*.

III. RELEASE BY CREDITOR TO DEBTOR.

agreement to terminate disputes by payment of a sum of money.

rences have arisen between the parties hereto: AND WHEREAS, for the purpose of terminating and adjusting such disputes and differences, it was lately agreed between the creditor and debtor that the debtor should pay to the creditor the sum of [500*l.*] in full satisfaction and discharge of all claims and demands whatsoever; and that the creditor should execute such release as is hereinafter contained: NOW THIS DEED WITNESSETH that,

In consideration of a sum of money, creditor releases all claims to debtor.

in pursuance of the said agreement, and in consideration of the sum of [500*l.*] now paid by the debtor to the creditor (the receipt whereof is hereby acknowledged), he the creditor hereby releases the debtor, or his personal representatives, estates and effects, from ALL sums of money, and debts, accounts, actions, proceedings, claims, and demands whatsoever, for or by reason or on account of any matter, cause, or thing arising out of the transactions aforesaid, or otherwise, up to and inclusive of the day of the date of these presents.

IN WITNESS, &c.

IV. RELEASE *by* CREDITORS *to a* DEBTOR *under a* COMPOSITION (*f*).

THIS RELEASE (*g*) is made the —— day of ——, 19—, BETWEEN the several persons whose names and descriptions are

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(*f*) This deed will not bind dissentient creditors or executing creditors in the event of bankruptcy (*Re Stephenson*, 20 Q. B. D. 540), unless for the benefit of particular creditors only, as distinguished from creditors generally: *Re Samson and Schreiber*, 39 Sol. J. 594. The deed will be void unless registered under the Deeds of Arrangement Act, 1914, s. 2, and unless a majority in number and value of the creditors assent (see *Re Wilson*, [1916] 1 K. B. 382, 391) within twenty-one days after registration or such further time as the Court may allow (Deeds of Arrangement Act, 1914, s. 3); and to be valid against purchasers of land it must be registered under the Land Charges Act, 1925, s. 9. As to the registration of deeds of arrangement affecting land generally, see sect. 8 of the Land Charges Act, 1925. A purchaser of land is not prejudicially affected by notice of non-registration: see sect. 199 (1) of the L. P. A. 1925. Neither the validity of the registration nor the deed itself is affected by execution after registration: see *Re Batten*, 22 Q. B. D. 685. A deed of arrangement for *particular creditors*, if made before April, 1914, did not

(*g*) Stamp, 2*s.* 6*d.* per cent. on the total amount agreed to be paid under the composition.

IV. RELEASE BY CREDITORS TO A DEBTOR UNDER A COMPOSITION.

contained in the schedule hereto (hereinafter called "the creditors"), of the one part; and [*debtor*], of, &c. (hereinafter called "the debtor"), of the other part.

WHEREAS the debtor is indebted to each of the creditors in the sum written opposite his or her name in the third column of the schedule hereto.

AND WHEREAS the creditors have agreed to accept a composition of —— shillings in the pound in full discharge of their said debts.

NOW THIS DEED WITNESSETH as follows:—

Debtor to pay composition.

1. The debtor shall on or before the —— day of —— next pay to each of the creditors who shall execute these presents before that date a composition of —— shillings in the pound on his or her debt, being the sum set out in the fourth column of the schedule hereto opposite his or her name, which said composition each creditor agrees to accept in full satisfaction and discharge of his or her debt.

Release.

2. In case such composition shall be duly paid, each of them the creditors doth hereby release the debtor, his personal representatives, estate and effects, from his or her debt, and such release shall be binding and effectual on the creditors who execute these presents, although some of the creditors of the debtor may not execute these presents, and although the creditors or some of them who shall not execute the same shall receive payment in full (*h*).

Avoidance of release in case of bankruptcy, &c.

3. PROVIDED ALWAYS, that in case the debtor shall before the —— day of ——, 19—, have a receiving order in bankruptcy made against him, or in case he shall not before such date as aforesaid have paid to each of the creditors who shall execute these presents the amount of composition due to him or her as specified in the fourth column of the schedule hereto, then these presents shall be null and void.

IN WITNESS, &c. [SCHEDULE.

require registration: *Re Samson and Schreiber,* 39 Sol. J. 504; *Re Saumarez,* [1907] 2 K. B. 170; *Re Allix,* [1914] 2 K. B. 77. If made after that date for the benefit of three or more creditors it must be registered, but would not require the assent of a majority of the general creditors: see sect. 37 of the Bankruptcy and Deeds of Arrangement Act, 1913.

(*h*) See *Re Brindley,* [1906] 1 K. B. 377, at p. 388.

IV. RELEASE BY CREDITORS TO A DEBTOR UNDER A COMPOSITION.

THE SCHEDULE ABOVE REFERRED TO.

Name of Creditor.	Address, &c.	Debt.	Amount of Composition.	Witness to Execution by Creditor.

V. RELEASE *of all* DEMANDS *from a* RESIDUARY LEGATEE, *after* ATTAINING *the* AGE *of* TWENTY-ONE YEARS, *to* EXECUTORS *and* TRUSTEES.

Parties. THIS RELEASE (*i*) is made the —— day of ——, 19—, BETWEEN [*legatee*], of, &c., of the one part, and [*executors*], of, &c., of the other part:

Recitals: of will; WHEREAS [*testator*], late of ——, by his will, dated, &c., bequeathed unto his sister, [A. S.], and her assigns, during the residue of his term in the leasehold property therein mentioned, if she should so long live, an annuity of 30*l.*, and charged the same property therewith; AND he gave the residue of his personal estate (subject to various legacies), unto the said [*executors*], in trust for the maintenance of the said [*legatee*], his nephew (then an infant of the age of [thirteen] years), until he should attain twenty-one years of age; and from and after his attaining twenty-one, in trust for the said [*legatee*];

of probate and payment of annuity; AND WHEREAS the said [*testator*] died on the —— day of —— without having revoked or altered his said will and the same was duly proved on the —— day of ——, in the —— Principal [District] Probate Registry, by the said [*executors*], the executors therein named, who have paid the

(*i*) Stamp, 10*s*. on release, and further stamp, 10*s*. on the indemnity which extends to the releasee's liabilities under the lease. In case of a release containing an indemnity which simply relates to the releasee's liabilities as trustee or executor, and as between him and the *cestui que trust*, it would seem that one 10*s*. stamp would be sufficient.

said annuity of 30*l.* up to Lady Day last past, inclusive, and have paid all the debts and funeral and testamentary expenses of the said testator: AND WHEREAS the said [*legatee*] attained the age of twenty-one years on the —— day of ——, and the said [*executors*] have this day by deed assigned (*j*) unto him the said leasehold property [*or*, have assented by writing to the said leasehold property vesting in the said [*legatee*] under or by virtue of the said will] (but subject to the said annuity and to the payment of the rent reserved by and performance of the covenants and conditions contained in the lease under which the said leasehold property is held), and have delivered to him all deeds and writings relating thereto which were in their custody or power; AND WHEREAS the said [*executors*] have this day stated and settled with the said [*legatee*] a true, full and particular account in writing of and concerning all their payments, receipts, and disbursements, as such trustees and executors as aforesaid, up to this day, so far as he is interested therein; which account has been signed by the said [*legatee*]; AND by the said account there appears to be due to the said [*legatee*] in respect of the said residue the sum of [5,000*l.*]; AND WHEREAS the said [*executors*] have duly paid to the said [*legatee*] the said sum of [5,000*l.*], as he doth hereby acknowledge; NOW THIS DEED WITNESSETH that, in consideration of the premises, the said [*legatee*] hereby releases and discharges the said [*executors*], and each of them, from all actions, proceedings, claims, and demands whatsoever for or on account of the real or personal estate of the said [*testator*], deceased, or any part thereof, or the income thereof, or of any part thereof; [AND the said [*legatee*] hereby covenants with the said [*executors*] to indemnify them, and each of them, and their respective personal representatives, from all succession or other duties payable in respect of the said leasehold hereditaments, upon the death of the said [A. S.], and from all responsibility in respect of the payment of the said rent and performance and observance of the said covenants

V. RELEASE BY RESIDUARY LEGATEE ON ATTAINING MAJORITY.

of assignment of leaseholds;

of settlement of accounts;

Testatum.

Release.

Covenant of indemnity (*k*).

(*j*) As to the liability of personal representatives or trustees under covenants in leases, and the protection afforded after conveyance to a legatee or devisee, see sect. 26 of the T. A. 1925.

(*k*) If a similar covenant for indemnity is contained in the assignment of the leaseholds, it will not be required here; but see *post*, p. 298, note (*p*).

V. RELEASE BY RESIDUARY LEGATEE ON ATTAINING MAJORITY.

and conditions (*l*), or otherwise, in respect of the assignment of the said leasehold property to the said [*legatee*] as aforesaid, or any other matter or thing in anywise relating to the premises].

IN WITNESS, &c.

VI. GENERAL RELEASE *by a* RESIDUARY LEGATEE *to a* SURVIVING EXECUTOR, *with special* RECITALS *of* TRANSACTIONS *in the* TRUST, *by which* LOSSES *had* ACCRUED, *and the* EXECUTORS *had incurred* RESPONSIBILITY; COVENANT *of* INDEMNITY *against the* COVENANTS *in* LEASES *assigned by the* EXECUTOR *to the* LEGATEE (*m*).

Parties.

THIS RELEASE (*n*) is made the —— day of ——, 19—, BETWEEN [*legatee*], of, &c. (hereinafter called "the legatee"), of the one part, and [*surviving executor*], of, &c. (hereinafter called "the surviving executor"), of the other part:

Recitals: of will, &c.;

[*Recite the will of* [A. B.] (hereinafter called "the testator"), *whereby the whole of his real and personal property was devised and bequeathed to his executors, in trust to sell and convert the same, and invest the moneys arising therefrom in government, real, or other authorised trustee securities, for the benefit of the testator's widow for life, and, after her decease, in trust for the legatee, his nephew, absolutely; also, the death of the testator without revoking or altering his will and probate*];

of the death of legatee for life;

AND WHEREAS the said [*widow*] died on the —— day of ——, having from time to time during her life received from the said [*executors*] the dividends and interest arising from the funds in which the trust moneys constituting the residuary personal estate of the testator had been invested; and also the rents and income arising from so much of the said trust estate as from time to time remained unsold and unconverted;

of death of releasee's co-executor;

AND WHEREAS the said [*deceased executor*] (hereinafter called "the deceased executor") died on the —— day of —— last;

that the deceased co-executor had assumed the principal management;

AND WHEREAS the surviving executor, during the life of his co-executor

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(*l*) See note (*j*), *supra*, as to sect. 26, T. A. 1925.

(*m*) See sect. 26 of the T. A. 1925.

(*n*) Stamps, 10*s*. on release and 10*s*. on indemnity: see *ante*, p. 294, note (*i*).

VI. RELEASE BY RESIDUARY LEGATEE TO A SURVIVING EXECUTOR.

(the deceased executor), did not personally act or interfere in the management of the affairs of the said trust estate, except for the purpose of executing conveyances and transferring funds, and performing other acts of a similar nature, at the request of the deceased executor (who had been the confidential agent and adviser of the said testator), and was more intimately conversant with his affairs than the surviving executor, on which account the deceased executor, with the consent and acquiescence of the surviving executor, assumed the entire and exclusive management of the said trust estate; AND WHEREAS, upon the decease of the deceased executor, an investigation of the affairs of the said trust estate took place, when it was discovered that he had applied to his own use certain sums of money, the produce of portions of the said trust property which had been sold by the deceased executor and surviving executor as aforesaid, and had otherwise neglected the due execution of the trusts created by the said recited will [particularly, in omitting to sell and convert into money certain parts of the said residuary trust estate]; by reason whereof the said [*widow*] had received out of the said trust property, an annual income considerably exceeding what she would have been entitled to if the said trust property had been duly converted and the produce thereof invested pursuant to the trusts of the said will (*o*); and the value and amount of the reversionary interest of the legatee, under the said will, had been proportionally diminished and deteriorated; AND WHEREAS the estate of the deceased executor, at the time of his decease, was insolvent, and wholly inadequate for the payment of his debts; and, therefore, the legatee called upon and required the surviving executor to make good the said losses and deficiencies which accrued to the said trust estate by reason of the transactions aforesaid; but the legatee being now fully convinced that the surviving executor was ignorant of the breaches of trust committed by the deceased executor, has consented to enter into the following arrangement and compromise with the surviving executor: (that is to say), That the surviving executor should, at his own costs and charges, deliver up and

that various breaches of trust had been discovered to have been committed by the deceased executor;

that deceased executor had died insolvent;

(*o*) When breaches of trust have been committed, to which the release is meant to extend, it is better to recite them, in order to preclude the allegation of their not having been known to, or in the contemplation of, the releasor: see *ante*, p. 289, note (*a*).

VI. RELEASE BY RESIDUARY LEGATEE TO A SURVIVING EXECUTOR.

effectually assign and transfer to the legatee, ALL and singular the trust estates, moneys, and property now in the hands of the surviving executor, and that thereupon the legatee should execute to the surviving executor a general release in manner hereinafter contained; AND FURTHER, that, inasmuch as part of the said trust estate consisted of leasehold property, held subject to the payment of rents, and to the observance and performance of certain covenants, the legatee should execute to the surviving executor such covenant of indemnity concerning the same as is hereinafter contained (*p*); AND, lastly, it was agreed that the costs of these presents, and otherwise attending the performance of the said agreement, should be paid by the surviving executor; AND WHEREAS, in pursuance of the said agreement, the surviving executor has, by a deed of even date herewith, assigned to the legatee ALL and singular the messuages, gardens, and pieces or parcels of ground, situate at ——, lately belonging to and in the occupation of the testator, deceased, and held by him under two leases, dated the —— day of ——, and the —— day of —— respectively, subject to the rents thereby respectively reserved; and to certain covenants and agreements on the part of the testator, or his personal representatives, to be observed and performed: AND WHEREAS, in further pursuance of the said agreement, the surviving executor has this day transferred into the name of the legatee the sum of £—— [2½ per cent. Consolidated Bank Annuities], and also the sum of £—— [Bank Stock], constituting other part of the property of the testator, deceased: AND WHEREAS, in further pursuance of the said agreement, the surviving executor has this day paid to the legatee the sum of £——, being the

of assignment of leaseholds by deed of even date;

of the transfer of funds;

payment of money balance.

(*p*) Prior to January 1st, 1926, it is clear that the executor of a lessee assigning leaseholds to a legatee, whether specific or residuary, was entitled to an indemnity against the rent and covenants of the lease, to which, notwithstanding the assignment, he continued liable to the extent of the assets that had reached his hands: *Simmons* v. *Bolland*, 3 Mer. 547. In the case of an assignment to a *purchaser* no such protection was needed: see *Re Lawley*, [1911] 2 Ch. 530. But see now sect. 26 of the T. A. 1925, replacing sects. 27 and 28 of the L. P. A. (Amendment) A. 1859 (22 & 23 Vict. c. 35), where the protection afforded to personal representatives is extended where the lease, subject to the rent, has been assigned or devised to a devisee or legatee. Trustees are also now similarly protected. And see K. & E. 12th ed. vol. 2.

VI. RELEASE BY RESIDUARY LEGATEE TO SURVIVING EXECUTOR.

balance remaining in the hands of Messrs. —— & Co., of ——, bankers, to the credit of the said trust estate of the testator, deceased; which sum of £—— constitutes the entire residue of the said trust property in the hands of the surviving executor as aforesaid: NOW THIS DEED WITNESSETH as follows:—

Release.

1. In further pursuance of the said agreement, and in consideration of the premises, he the legatee doth hereby release and for ever discharge the surviving executor, and his personal representatives, estate and effects, of and from all actions, proceedings, claims, accounts, and demands for or in respect of the real or personal estate of the testator, or any part thereof respectively, or the moneys arising from the sale, conversion, and getting in of the same, or for or in respect of the rents, profits, or income thereof respectively, or any part thereof, or for or in respect or by reason of any misappropriation of the trust funds by the deceased executor, for his own benefit or otherwise, or for or in respect or by reason of the wrongful application for the benefit of the said [*testator's widow*], of the trust estate of the testator, or any part thereof, or the rents, profits, dividends, interest, or income thereof respectively, or any part thereof, or for or in respect of any sale, conversion, investment, payment, application, valuation, act, or thing made, done, executed, neglected, or omitted by the deceased executor and surviving executor, or either of them, in the administration of the said estate or the execution of the trusts of the said will, or for or by reason or in consequence of any losses, damages, or expenses which may have happened or accrued to, or have been incurred by, the estate of the testator, or to or by the legatee by reason or in consequence of such acts, proceedings, neglects, or defaults, or of any other matter, cause, or thing incidental to, or connected with, the said trust estate, or the will of the said testator, whether the same have been particularly mentioned or referred to in the recitals of this present deed or not.

Covenant for indemnity.

2. He the legatee hereby covenants with the surviving executor that he the legatee, or his personal representatives, will from time to time, and at all times hereafter, keep indemnified the surviving executor, or his personal representatives, and also the personal representatives for the time being of the testator, deceased, from and against all sums of money, costs, charges, damages, and expenses whatsoever, which he or they shall or may pay, incur,

VI. RELEASE BY RESIDUARY LEGATEE TO A SURVIVING EXECUTOR.

or be put unto by reason or on account of the non-payment of the said respective rents, or any part thereof respectively (*q*), or the non-observance or non-performance by the legatee, or his personal representatives, of any of the covenants or conditions contained in the said leases of the —— day of —— and the —— day of —— respectively hereinbefore referred to, or either of them, and on the lessee's part to be observed and performed, or of any other matter or thing in anywise relating thereunto.

In witness, &c.

VII. RELEASE *and* Indemnity *by some of the* Persons *beneficially* Interested *under a* Will *to the* Trustees Carrying on *the* Testator's Trade *without* Authority.

THIS RELEASE (*r*) is made the —— day of ——, 19—, Between [*adult beneficiaries*], of, &c., of the first part; [*infant beneficiary*], of, &c., of the second part; and [*trustees*], of, &c., of the third part.

Recitals: of will;

Whereas [*testator*], late of, &c., by his will dated, &c., after appointing the said [*trustees*] trustees and executors thereof, and making sundry specific and general legacies as therein mentioned, gave, devised, and bequeathed all the residue of his real and personal property to his trustees upon trust for sale, and after payment of his funeral and testamentary expenses and debts, to invest the net residue thereof (thereinafter called "his trust estate") in or upon certain stocks, shares, and securities therein mentioned, with power to vary the same and to pay or apply the income arising therefrom to or for the benefit of his children in equal shares until such time as there should be no child of his for the time being living under the age of twenty-one years; and so soon as there should be no child of his living under that age, the testator directed his trustees To hold as well the capital as the income of the said trust estate upon trust for such of his children as should be then living, if more than one, in equal

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(*q*) This covenant may now be strictly not necessary, having regard to sect. 26 of the T. A. 1925; but its insertion in a deed of this nature may still seem to be desirable for the protection of personal representatives.

(*r*) Stamps, 10*s*. on release and 10*s*. on indemnity: see p. 294, note (*i*).

VII. RELEASE AND INDEMNITY TO TRUSTEES CARRYING ON TESTATOR'S TRADE.

shares: PROVIDED that if any child of his should die before the period of absolute vesting under the trust aforesaid leaving a child or children who should survive such period, then such child or children so surviving should take, and, if more than one, in equal shares, the share which their, his, or her parent would have taken had he or she survived the period of absolute vesting.

of death of testator and probate;

AND WHEREAS the testator died on the —— day of —— without having altered or revoked his said will, which was duly proved by the said [*trustees*] on the —— day of —— in the Principal [District] Probate Registry.

of testator's issue;

AND WHEREAS the testator left four children him surviving, namely, the said [*adult beneficiaries*], all of whom have attained the age of twenty-one years, and the said [*infant beneficiary*], who was born on the —— day of ——.

that part of estate consisted of a business

AND WHEREAS part of the testator's estate consisted of the assets and goodwill of the business of a —— carried on by him at his death at —— [under the style of ——], and the said business has at the request of the said [*adult beneficiaries*] been carried on at a considerable profit since the testator's death by the said [*trustees*].

which ought to have been sold;

AND WHEREAS the said business ought to have been sold and wound up as soon after the testator's death as was reasonably possible.

of application of profits;

AND WHEREAS, after making provision for depreciation and the payment of [4] per cent. per annum on the estimated value of the goodwill and assets of the said business to the income account of the said trust, the said [*trustees*] have invested the surplus profits, amounting to the sum of £——, arising from the said business upon certain stocks and securities authorised by the said will, as mentioned in the second part of the schedule hereto.

of property in trust;

AND WHEREAS the property now subject to the trusts of the said will consists of the real and personal estate, the particulars whereof are set forth in the first and second parts respectively of the schedule hereto.

of intention of joining infant beneficiary;

AND WHEREAS the name of the said [*infant beneficiary*] has been inserted as a party to these presents to the intent that he may, if he shall think fit, execute the same on his attaining the age of twenty-one years; but the effect of the execution of these presents by the said [*adult beneficiaries*] or any of them as binding each such respective person shall not in any way be prejudiced by the non-execution of these presents by the said [*infant bene-*

VII. RELEASE AND INDEMNITY TO TRUSTEES CARRYING ON TESTATOR'S TRADE.

ficiary] or by any other person herein named as a party to these presents (*s*).

of consent of trustees to carry on the business;

AND WHEREAS the said [*trustees*], at the request of the said [*adult beneficiaries*], have consented to carry on the said business until the said [*infant beneficiary*] shall have attained the age of twenty-one years, or until such request shall have been made by any of the parties hereto for the sale and winding-up of the said business as hereinafter mentioned, upon having such release and indemnity given to them as is hereinafter contained.

NOW THIS DEED WITNESSETH as follows:—

trustees to carry on trade;

1. In consideration of the premises, the said [*adult and infant beneficiaries*] do and each of them doth hereby declare that it shall be lawful for, but not incumbent on, the said [*trustees*], and other the trustees or trustee for the time being of the said will, to carry on the said business, and do all usual acts for that purpose until they or he shall receive from the said [*adult and infant beneficiaries*], or any one or more of them, or the personal representatives of any of them, notice in writing to discontinue the same: AND to do such acts in carrying on the said business or in relation thereto, and to sell, demise, and deal with the said real and personal estate of the said testator, or any part thereof, at such time or times, and upon such terms, on credit or otherwise, as shall from time to time be authorised in writing by the said [*adult and infant beneficiaries*], or any one or more of them.

to do such acts as competent *cestuis que trust* shall authorise.

Each *cestui que trust* to be bound by such acts only as he shall authorise.

2. PROVIDED that the authority so to be given, and the following release and covenant for indemnity against the consequences of any acts done in pursuance of such authority, shall not have any operation against, or be binding upon, any of the said parties hereto, or his or her property or interest, except so far as he or she individually may have given such authority.

(*s*) Where the parties are infants or other persons not *sui juris*, or whose binding execution cannot be obtained forthwith, it is necessary to show plainly, either by recital or proviso, the intention that the non-execution by any person named therein shall not prejudice or affect the validity of the deed by those who effectually execute it: see *Peto* v. *Peto* (1849), 16 Sim. 590; *Bolitho* v. *Hillyar*, 34 Beav. 180. Where a minor executes a release upon attaining his majority, he should be independently advised: *Re Garnett*, 31 Ch. D. 1; and compare *Re Roberts*, [1905] 1 Ch. 704.

VII. RELEASE AND INDEMNITY TO TRUSTEES CARRYING ON TESTATOR'S TRADE.

Release by *cestui que trust.*

3. The said [*adult and infant beneficiaries*] hereby release the said [*trustees*], and each of them, their and each of their personal representatives, from all present and future actions, proceedings, and claims against them or any of them, on account of the said business having been so carried on as aforesaid, or of any involuntary loss which has been or may be sustained in the said business, or by reason of anything to be done in pursuance of such authority as aforesaid.

Covenant of indemnity.

4. The said [*adult and infant beneficiaries*] jointly and severally covenant (*t*) with the said [*trustees*] jointly and severally that the said covenanting parties respectively, and their respective personal representatives will at all times indemnify the said [*trustees*] respectively, and their respective personal representatives, against all losses and liabilities consequential on such trading as aforesaid, and from all actions, proceedings, claims and demands on the part of any person or persons whomsoever, and all costs, charges, damages, and expenses by reason of the said business having been carried on as aforesaid, or by reason of any acts to be done in pursuance of these presents or of such authority as aforesaid; AND that the said trustees or trustee for the time being may retain, or allow or pay to their or his co-trustee or co-trustees, or to the personal representatives of any deceased trustee, out of the respective shares of the said covenanting parties in the said trust property, compensation for all losses that they or he may sustain as aforesaid, and that such compensation shall be a specific charge on such shares in priority to all other charges.

Trustees to be indemnified out of the shares of the covenanting parties.

IN WITNESS, &c.

THE SCHEDULE HEREINBEFORE REFERRED TO.

PART I.

PART II. (*u*).

(*t*) See sects. 81, 82, and 83 of the L. P. A. 1925.

(*u*) In this part of the schedule the investments representing the investments of the surplus profits of the business should be distinguished from the rest of the personal estate by entitling them "Investments of surplus profits of the business."

VIII. RELEASE TO TRUSTEES OF WILL ON DISTRIBUTION.

VIII. RELEASE *to the* TRUSTEES *of a* WILL *upon* DISTRIBUTION *of the* TRUST PROPERTY *between the* TESTATOR'S TWO CHILDREN, *a* DAUGHTER'S SHARE *being* TRANSFERRED *to the* TRUSTEES *of her* MARRIAGE SETTLEMENT.

Parties.

THIS RELEASE (*x*) is made the —— day of ——, 19—, BETWEEN [A. B.] (*son of the testator*), of, &c., of the first part; [C. D.] (*husband of testator's daughter*), of, &c., and [E. D.], his wife, of the second part; [G. H.], of, &c., and [J. K.], of, &c. (*trustees of daughter's marriage settlement*), of the third part; and [L. M.], of, &c., and [N. O.], of, &c. (*trustees of the will*), of the fourth part: WHEREAS [*testator*], late of, &c., deceased, by his will dated, &c., after bequeathing the specific and pecuniary legacies therein mentioned, devised and bequeathed all his real and personal estate, whatsoever and wheresoever, unto [L. M.] and [Q. R.], of, &c., upon trust for sale and conversion; and upon further trust [*recite trusts for investment, for payment of income to testator's widow for her life or until re-marriage, and for the benefit of issue as the widow should appoint, and in default of appointment to testator's children equally, sons at twenty-one years of age, daughters on attaining that age or marriage*], AND the testator appointed the said [L. M.] and [Q. R.] executors of his will; AND WHEREAS the said [*testator*] died on the —— day of ——, 19—, leaving the said [A. B.] and [E. D.] (then [E. B.]) his only children him surviving, and his will was duly proved by the said [L. M.] and [Q. R.] in the Principal [District] Probate Registry on the —— day of ——, 19—; AND WHEREAS, after the death of the testator, [L. M.] and [Q. R.] sold and converted his real and personal estate, except a leasehold house and the grounds thereto belonging situate at ——, in the county of ——, and held for the term of twenty-one years from the —— day of ——, and out of the moneys arising from such sale and conversion, and out of the ready money of the testator, paid his funeral and testamentary expenses and debts, and invested the residue, amounting to £——, as to £—— on the security of a mortgage of freehold hereditaments situate at ——, in the county of ——, and as to £——, the residue thereof, in the purchase of

Recitals: of will;

of death of testator, and probate of will;

sale and conversion of estate;

(*x*) Stamp, 10*s*.

VIII. RELEASE TO TRUSTEES OF WILL ON DISTRIBUTION.

[£—— $2\frac{1}{2}$ per cent. Consolidated Stock]; AND WHEREAS the said [Q. R.] died on the —— day of ——, and by a deed dated, &c., and made between [*parties*], the said [N. O.] was duly appointed in his place to be a trustee of the said will; AND WHEREAS the lease of the said leasehold premises expired on the —— day of ——, without the same premises having been sold, and it is apprehended that the omission to sell the same was a breach of trust on the part of the trustees of the said will (*y*); AND WHEREAS [*testator's widow*], by a deed poll under her hand and seal, dated the —— day of ——, 19—, in exercise of the power given to her by the said will, appointed that the trust funds subject to the trusts of the said will should thenceforth, subject to her life interest in the income thereof, be held in trust for the said [A. B.] and [E. D.] (then E. B.) in equal shares absolutely; AND WHEREAS, by a deed, dated, &c., and made, &c. (being a settlement made in consideration of the marriage afterwards solemnized between the said [C. D.] and [E. D.], the moiety of the trust funds so appointed to the said [E. D.] as aforesaid was assigned by the said [E. D.], with the approbation of the said [C. D.], unto the said [G. H.] and [J. K.], upon the trusts therein contained and declared concerning the same; AND WHEREAS the said [*widow*] died on the —— day of ——, 19—; AND WHEREAS the said [L. M.] and [N. O.], at the request of the parties hereto of the first three parts, called in the said mortgage debt or sum of £—— and thereout paid the sum of £—— for succession duty and other expenses incidental to the trust, leaving a balance of £—— cash in their hands; AND WHEREAS all income arising from the trust funds during the life of the said [*widow*] was duly paid to her; AND WHEREAS the said [L. M.] and [N. O.] have transferred the said sum of [£—— $2\frac{1}{2}$ per cent. Consolidated Stock] into the names of the said [G. H.] and [J. K.], and have paid to them the sum of £—— cash (being the moieties of the said sums of £—— like stock and £—— cash respectively), to be held by them upon the trusts of the said settlement, and have transferred the sum of £—— like stock into the name of the said [A. B.], and have paid to him the sum of £—— cash (being the residue or other moiety of the said sums of £—— like stock and £——

death of a trustee and appointment of new trustee;

breach of trust;

appointment of trust funds,

settlement of appointed share;

death of testator's widow;

state of the trust property;

transfers and payments.

(*y*) As to reciting breaches of trust, see *ante*, p. 297, note (*o*).

VIII. RELEASE TO TRUSTEES OF WILL ON DISTRIBUTION.

cash respectively) (which said transfers and payments in manner aforesaid the said parties hereto of the first three parts do hereby respectively acknowledge): NOW THIS DEED WITNESSETH as follows:—

Release.

1. In consideration of the premises, the several parties hereto of the first three parts respectively do, and every one of them doth hereby release the said [L. M.] and [N. O.], and each of them, and their and each of their personal representatives, estates and effects, and also the estate and effects of the said [Q. R.], deceased, from all actions, proceedings, claims, demands, and accounts whatsoever, for or in respect of the real and personal estate of the said [*testator*], deceased, and the trust funds for the time being representing the same, and the income thereof, and the management, investment, or application of the same respectively, or for any thing done or omitted or permitted to be done by the said [L. M.] and [N. O.], or the said [Q. R.], or any of them, in or about the administration or exercise of any of the trusts, powers, or provisions of the said will, or for or in respect of any thing in any wise relating to the premises (*z*).

Covenant against incumbrances.

2. Each of them, the said [A. B.] and [E. D.], as to his or her acts only, hereby covenants (*a*) with the said [L. M.] and [N. O.] that, except so far as relates to the settlement in manner aforesaid of the share of the said [E. D.] in the trust funds and premises, they, the said [A. B.] and [E. D.] respectively, have not executed or done or knowingly suffered or been party or privy to any deed or thing whereby their respective shares and interests in the said trust funds and premises are or may be in any manner incumbered

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Proviso where the distribution is of part of trust property.

(*z*) If only a partial distribution has been made, the release will be limited to the funds actually paid over and the dealing with them; and the following clause should be added:—

"PROVIDED ALWAYS, that nothing herein contained shall operate to release the said [*executors*], or either of them, from the personal estate of the said testator, or the investments representing the same, or the income thereof respectively, other than the said moneys and investments so paid and transferred as aforesaid, and the income thereof, or from any actions, accounts, claims, and demands, for or in respect of such personal estate and income other than as aforesaid."

(*a*) See sects. 81, 82, and 83 of the L. P. A. 1925.

or affected, or whereby they are respectively disentitled to share in the distribution of the said trust funds and premises in manner hereinbefore mentioned.

VIII. RELEASE TO TRUSTEES OF WILL ON DISTRIBUTION.

IN WITNESS, &c.

IX. RELEASE *to the* TRUSTEES *of a* MARRIAGE SETTLEMENT *upon* DISTRIBUTION *of the* SETTLED FUNDS, *the* DEALINGS *with the* FUNDS *being set out in a* SCHEDULE.

THIS RELEASE (*b*) is made the —— day of ——, 19—, BETWEEN [A. B.] (*son*), of, &c., of the first part; [C. B.] (*son*), of, &c., of the second part; [D. E.] (*married daughter*), the wife of [F. E.], of, &c., of the third part; [G. B.] (*daughter*), of, &c., spinster, of the fourth part; the said [A. B.] and [H. I.], of, &c. (*executors of surviving husband*), of the fifth part; and [J. K.], of, &c., and [L. M.], of, &c. (*trustees of settlement*), of the sixth part: WHEREAS, by a deed dated, &c., and made between [*parties*] (being the settlement made on the marriage shortly afterwards solemnized between the said [*husband*] and [*wife*]), it was declared that the said [*original trustees*], or other the trustees or trustee for the time being thereof, should hold the stocks, funds, shares, and securities therein mentioned, the particulars whereof are specified in the first part of the schedule hereto, upon trust either to allow the same to continue in their then state of investment respectively, or at any time or times with the consent of the said [*husband*] and [*wife*], during their joint lives and of the survivor of them during his or her life, and after the death of the survivor at the discretion of the said trustees or trustee, to sell and convert the same into money; but as to some of the same which were then reversionary or contingent not until they should respectively fall into possession: AND to invest the proceeds of such sale and conversion in or upon any of the stocks, funds, shares, or securities therein mentioned, including amongst others the stocks, funds, shares, and securities, for and into which the proceeds of the said original trust premises have been from time to time varied and invested; AND upon further trust to pay the income to the said [*husband*] for life, and after his death to the said [*wife*],

Parties.

Recitals: of settlement;

(*b*) Stamp, 10*s*.

IX. RELEASE TO TRUSTEES OF MARRIAGE SETTLEMENT ON DISTRIBUTION.

if she should survive him, for life, and after the death of the survivor of the said [*husband*] and [*wife*] as to as well the capital as the income of the said trust funds and premises in trust for the issue of the marriage as the said [*husband*] and [*wife*] or the survivor should as therein mentioned appoint; and in default of such appointment in trust for the children of the said marriage who being sons should attain the age of twenty-one years, or being daughters should attain that age, or marry, if more than one in equal shares [*set out hotchpot clause, maintenance and accumulation clauses (if any), and advancement clause*]; AND WHEREAS there has been issue of the said marriage the said parties hereto of the first four parts respectively, who have respectively attained the age of twenty-one years some time past, and also one other child [J. B.], who died in the year ——, an infant and unmarried: AND WHEREAS the said [*original trustee*] died on the —— day of ——, 19—, and by a deed of appointment dated, &c., and made between [*parties*], the said [J. K.] was duly appointed to be a trustee of the said settlement in the place of the said [*original trustee*], deceased: and upon such appointment all the stocks, funds, shares, and securities then representing the trust funds subject to the said settlement, were duly transferred into and vested in the said [J. K.], jointly with the said [*surviving original trustee*], upon the trusts of the said settlement; AND WHEREAS on or about the —— day of ——, 19—, the said [J. K.] and [*surviving original trustee*], with the consent in writing of the said [*husband*] and [*wife*], advanced to the said [A. B.] the sum of £——: AND WHEREAS the said [*wife*] died on the —— day of ——, 19—: AND WHEREAS, on the —— day of ——, 19—, the said [D. E.], formerly [D. B.], intermarried with the said [F. E.], but no settlement was entered into either before or after the said marriage; AND WHEREAS, by a deed of appointment, dated, &c., and made between [*parties*], the said [L. M.] was duly appointed to be a trustee of the said settlement in the place of the said [*surviving original trustee*], who was desirous of being discharged from the trusts thereof; and on such appointment the stocks, funds, shares, and securities, then representing the said trust funds, were transferred to and vested in the said [L. M.] jointly with the said [J. K.], upon the trusts of the said settlement: AND WHEREAS the said [*husband*] died on the —— day of ——, 19—, having by his will, dated, &c., and proved,

of marriage of parents of *cestuis que trust*;

of state of family;

of appointment of J. K. as trustee;

of advance to son;

of death of wife;

of marriage of a daughter;

of appointment of L. M. as trustee;

of death of husband;

&c., appointed the said [A. B.] and [H. I.] to be the executors thereof; AND WHEREAS no appointment was made by the said [*husband*] and [*wife*], or the survivor of them, under the respective powers given to them by the said settlement as aforesaid; AND WHEREAS the said [L. M.] and [J. K.] have recently sold the sum of [£—— Midland Railway 4 per cent. debenture stock], part of the sum of £—— like stock, as mentioned in the second part of the schedule hereto, and out of the sum of £—— realised by such sale have paid the death duties (*c*) which became payable on the death of the said [*husband*] in respect of the trust funds, and have retained the sum of £——, the balance of the said sum of £——, to meet the costs and expenses of and incidental to these presents and the trust premises. AND WHEREAS the schedule hereto contains in the first part thereof a full and particular account and statement of the trust funds and property originally comprised in the said settlement; and, in the second part thereof, the particulars of all sales, variations of investment, and other dealings with the same trust premises, and of all receipts and payments by the trustees or trustee for the time being of the said settlement in respect of the capital of the said trust premises, and since the death of the said [*husband*] of the income thereof; and in the third part thereof the particulars of the moneys, stocks, funds, shares, and securities now representing the trust funds and property remaining subject to the said settlement (*d*); AND WHEREAS the parties hereto of the first four parts respectively have carefully examined the accounts contained in the said schedule hereto, and are satisfied

and probate of will appointing executors;

of sale of trust funds for payment of duties and costs;

of statement of particulars of trust property, and accounts, &c., in schedule;

of approval of accounts by *cestuis que trust*;

(*c*) See, as to death duties, K. & E. 12th ed. vol. 2; and see also Finance Act, 1914, ss. 12 to 16.

(*d*) It is sometimes more convenient not to schedule the capital and income accounts, in which case delete all reference to the second part of the schedule and insert following recital:—

"AND WHEREAS the accounts of the trustees for the time being of the said settlement, showing all the particulars of their receipts and disbursements in relation to the said trust premises and the dealings therewith from the date of the said deed to the present time, have been submitted to the parties hereto of the first four parts, and have been carefully examined and signed by them in testimony of their approval thereof."

IX. RELEASE TO TRUSTEES OF MARRIAGE SETTLEMENT ON DISTRIBUTION.

with and approve of the same: AND WHEREAS all income payable to the said [*husband*] during his life, in respect of the said trust premises, has been duly paid or accounted for up to the date of his death (as the said [A. B.] and [H. I.] hereby acknowledge); AND WHEREAS the said several parties hereto of the first four parts have agreed that the trust funds and property specified in the third part of the schedule hereto shall be divided amongst them in manner mentioned in the fourth part of the said schedule, and that for the purpose of such division the said [A. B.] shall be treated as bringing into hotchpot the sum so advanced to him as aforesaid; AND WHEREAS, at the request of the same parties hereto, the said [J. K.] and [L. M.] have paid, transferred, and divided the said trust funds and property accordingly:

of payment of income to husband till his death;

of agreement for distribution and release.

NOW THIS DEED WITNESSETH as follows:—

Release.

1. In consideration of the premises, the parties hereto of the first five parts respectively, do, and every of them doth, hereby release the said [J. K.] and [L. M.], and also the said [*original trustees*], and every of them, and their and every of their personal representatives, estates and effects, from all actions, proceedings, claims, demands, and accounts, whatsoever for or in respect of the trust funds and property comprised in or now or at any time heretofore subject to the trusts of the said settlement, or the income thereof, or of any part thereof, or for or in respect of any act, matter, or thing mentioned or referred to in the said schedule hereunder written, or for or in respect of anything in anywise relating to the premises.

Covenant against incumbrances

2. Each of them the parties hereto of the first four parts, as to his or her own acts, hereby covenants with the said [J. K.] and [L. M.], and their respective personal representatives, that they, the covenanting parties respectively, have not done or been privy or party to anything whereby the respective shares and interests of the covenanting parties in the trust premises are or may be in any manner incumbered or affected, or whereby they are respectively disentitled to share in the division and distribution of the said trust estate in manner hereinbefore mentioned.

IN WITNESS, &c.

THE SCHEDULE HEREINBEFORE REFERRED TO.

FIRST PART.

[*This will be a list of the original securities.*]

SECOND PART.

[This will be a capital and income account, and show all dealings with the trust funds.]

THIRD PART.

[This will be a list of securities available for distribution.]

FOURTH PART.

SECURITY. Nominal value and market value.	Nominal amount (if any) of each security appropriated to—			
	A. B.	C. B.	D. E.	G. B.

X. RELEASE *of an* ANNUITY *on a* REPURCHASE, *and* ASSIGNMENT *of the* TERM *to* MERGE, *where the* REPURCHASE-MONEY *is* PAID *at the* TIME, *or has been previously* PAID. (*By* SUPPLEMENTAL DEED) (*e*).

THIS RELEASE (*f*) is made, &c., BETWEEN [*grantee*], of, &c. (*g*), of the first part; [*trustees*], of, &c., of the second part; and [*grantor*], of, &c., of the third part; and supplemental to a deed dated, &c., and expressed to be made between [*parties*] for securing to the said [*grantee*] an annuity of £—— by a charge thereof upon the messuages, lands and hereditaments (*h*) particu- Parties.

(*e*) See sect. 58 of the L. P. A. 1925.

(*f*) Stamp *ad valorem* as on a sale: see Vol. I., Conveyances, p. 356.

(*g*) By sect. 167 of the L. P. A. 1925: "Every disposition (including a disclaimer) of real or personal property or any interest therein which a married woman is under . . . . or any other enactment authorised to make by deed . . . . shall . . . . be effectual if made by her with the concurrence of her husband but without acknowledgment." And by sect. 168, *ibid.*, "a married woman has power by deed to disclaim any estate or interest in land with or without the concurrence of her husband as the case may require." See, further, Wolstenholme and Cherry's Conveyancing Statutes, 11th ed. vol. 1, at p. 424. As to release or conveyance of annuities of married women.

(*h*) In the case of a rentcharge a release therefrom of part of the land charged therewith does not extinguish the whole rentcharge: L. P. A. 1925, s. 70.

X. RELEASE AND RE-CONVEYANCE ON REPURCHASE, &c.

larly described in the said deed, and by a demise of the same premises to the said [*trustees*] for a term of [ninety-nine] years as therein mentioned: WHEREAS (*i*) the said [*grantor*] has contracted with the said [*grantee*] for the repurchase of the said annuity of £——, at or for the price of £——. AND WHEREAS all arrears of the said annuity of £—— have been paid and discharged by the said [*grantor*] up to and including the day of the date of these presents, as the said [*grantee*] hereby admits and acknowledges. NOW THIS DEED WITNESSETH that, in pursuance of the said contract, and in consideration of the sum of £——, to the said [*grantee*] paid by the said [*grantor*], upon the execution of these presents (the receipt whereof the said [*grantee*] hereby acknowledges), [he] the said [*grantee*] hereby releases unto the said [*grantor*], ALL THAT the said annuity of £——, so granted and secured to the said [*grantee*], for and during the life of the said [*grantor*], in and by the said deed as aforesaid: AND all arrears and future payments thereof, with all powers of distress and entry, and all other remedies whatsoever for recovering the same: To the intent that the same annuity may be merged and extinguished in the freehold of the said hereditaments and premises (*k*): AND the said [*grantee*] hereby covenants with the said [*grantor*] that he the said [*grantee*] has

Recital of contract for re-purchase.

Recital that all arrears have been paid.

First testatum.

Grant and release of annuity.

To the intent that the same may merge.

Covenant by grantee of annuity that he has not incumbered.

PREVIOUS REPURCHASE.

(*i*) If the annuity has been previously re-purchased without taking a release, &c. at the time, say,

Recital of previous repurchase.

"WHEREAS the said [*grantor*], by virtue of the power contained in the principal deed, repurchased the said annuity on the —— day of —— last past, and then paid unto the said [*grantee*] all arrears thereof, and also the sum of £—— in full for the absolute repurchase of the same; as the said [*grantee*] hereby acknowledges; AND thereupon the said deed was delivered up to the said [*grantor*]: but no actual release or surrender of the said annuity, or of the hereditaments and premises comprised in the said term of [ninety-nine] years, has been made or executed by the said [*grantee*] and [*trustees*] respectively. NOW THIS DEED WITNESSETH that, for the considerations aforesaid, he the said [*grantee*] hereby grants," &c.

Testatum, where there has been a previous repurchase.

(*k*) See sect. 185 of the L. P. A. 1925, and compare *Capital and Counties Bank* v. *Rhodes*, [1903] 1 Ch. 631, at pp. 652, 653; also see Wolstenholme and Cherry's Conveyancing Statutes, 11th ed. at p. 443.

not done, or knowingly permitted or been party or privy to any act, deed, matter, or thing whatsoever whereby the said annuity or any part thereof is or may be impeached, charged, or incumbered, or in any way affected; or whereby he the said [*grantee*] cannot or ought not to grant and release the said annuity unto the said [*grantor*] in manner aforesaid. AND THIS DEED FURTHER WITNESSETH that, for the considerations aforesaid, the said [*trustees*], at the request and by the direction of the said [*grantee*], testified by his execution of these presents, do, and each of them doth hereby as trustees convey, surrender, and release, unto the said [*grantor*], ALL THOSE the messuages, lands, hereditaments and premises comprised in the said term of [ninety-nine] years, with the appurtenances: To the intent that the said term of [ninety-nine] years may be merged in the reversion or freehold of the same hereditaments and premises (*l*).

Second testatum.

Surrender of term by trustees.

Parcels.

To merge the term.

IN WITNESS, &c.

XI. RELEASE *of* POWERS *of* JOINTURING *and* CHARGING PORTIONS *for younger* CHILDREN (*m*).

THIS DEED OF RELEASE (*n*) is made the —— day of ——, 19—, BETWEEN [*tenant for life*], of, &c., of the one part, and

Parties.

(*l*) See sect. 139 of the L. P. A. 1925.

(*m*) Sect. 155 of the L. P. A. 1925, enacts that—

"A person to whom any power, whether coupled with an interest or not is given may by deed release, or contract not to exercise, the power."

And see as to disclaimer of powers, p. 156, *ibid.*; and also sect. 160, which enacts that Part VI. (which contains sects. 155 and 156) shall apply to powers created or arising either before or after the commencement of the Act.

The donee of a special power can release the same for his own benefit: *Re Somes*, [1896] 1 Ch. 250; though he cannot revoke an appointment under a limited power with the object of obtaining a benefit thereby: *Re Jones's Settlement*, [1915] 1 Ch. 373. As to whether the trustee in bankruptcy of the donee of such a power could release it, see *Re Rose*, [1904] 2 Ch. 348; [1905] 1 Ch. 94. As to how far the exercise of such a power can be restricted by a negative covenant, see *Re Evered*, [1910] 2 Ch. 147 (discussed 54 Sol. J. 558); *Re Sugden*, [1917] 2 Ch. 92;

(*n*) Stamp, 10*s*.

XI. RELEASE OF POWERS.

[*remainderman*], of, &c., of the other part; AND supplemental to a resettlement (hereinafter referred to as the resettlement), dated, &c., and made between [*parties*]: WHEREAS [*first tenant for life*] died on the —— day of ——, 19—; AND WHEREAS on the —— day of ——, 19—, the said [*tenant for life*] intermarried with [*wife*], formerly [*wife's maiden name*], spinster, and he is now tenant for life in possession of the lands and hereditaments comprised in the resettlement; AND WHEREAS the said [*remainderman*] is the eldest son of the said [*tenant for life*] and [*wife*], and attained the age of twenty-one years on the —— day of ——, 19—, and he is now entitled to an entailed interest in the said lands and hereditaments in remainder expectant on the decease of the said [*tenant for life*], and there has been issue of the said marriage three other children and no more, namely [*give names*], all of whom are infants and unmarried.

Recitals:
of death of first tenant for life;
of marriage, &c. of present tenant for life;
of state of family;

AND WHEREAS the said [*tenant for life*] has never exercised either of the said powers of jointuring and charging portions for younger children reserved to him by the resettlement, or any of the powers ancillary thereto; AND WHEREAS the said [*tenant for life*] has recently under the will of [*testator*], of, &c., deceased, dated, &c., and proved, &c., become entitled to personal estate of considerable amount and value, out of which he the said [*tenant for life*] intends to make adequate provision for the said [*wife*], if she should survive him, and also for his children now or hereafter to be born other than the said [*remainderman*], and he has accordingly agreed with the said [*remainderman*] to release the powers of jointuring and charging portions given to or vested in him the said [*tenant for life*] by the resettlement in manner hereafter appearing.

of agreement for release.

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or by a covenant for quiet enjoyment, see *Nottidge* v. *Dering*, [1910] 1 Ch. 297. See Wolst. and Cherry's Conv. Stats., 11th ed. p. 522.

A power coupled with a duty is not capable of being released: *Re Eyre* (1883), W. N. p. 153; 49 L. T. 259; *Saul* v. *Pattinson*, 55 L. J. Ch. 831.

A special power, whether exerciseable by deed or will, could be released independently of the Act (Conveyancing Act, 1881): see *Smith* v. *Houblon*, 26 Beav. 482; *Re Radcliffe*, 1 Ch. 227; *Re Somes, ubi sup.*; *Horner* v. *Swann*, Turner & R. 430. As to release of a power by implication, see *Re Sugden's Trusts*, [1917] 2 Ch. 92. And see as to powers, note to sect. 155 of the L. P. A. 1925, in Wolst. and Cherry, 11th ed. pp. 407, 408.

Release of powers.

NOW THIS DEED WITNESSETH that, in consideration of the premises, he the said [*tenant for life*] hereby absolutely and irrevocably releases the lands and hereditaments comprised in the resettlement, or which now are or may hereafter become subject to the limitations thereof, from, first, ALL THAT the power or authority which by the resettlement is given to or vested in the said [*tenant for life*] by deed or will, to charge the said lands and hereditaments, or any part thereof, by way of jointure as therein mentioned, and to limit or create the usual powers and remedies, and to limit a term of years to secure the same; AND, secondly, ALL THAT the power or authority which by the resettlement is given to or vested in him, to charge all or any of the lands and hereditaments therein comprised, or any part or parts thereof, with the payment, for the portion or portions of his younger child or children, of such sum or sums of money and in such manner as in the same deed is mentioned, with all such other accompanying authorities as are in that behalf therein contained, AND all benefit and advantage of the said several powers and authorities, To the intent that the same powers shall respectively be absolutely extinguished and cease to be exercisable.

IN WITNESS, &c.

XII. RELEASE *from a* JOINTURE RENTCHARGE *after* 1925 *of* PART *of the* LANDS *charged therewith* (*o*) *under a* SETTLEMENT *executed prior to* 1926. SURRENDER *of* TERM *created for* SECURING *the* RENTCHARGE.

Parties.

THIS DEED OF RELEASE (*p*) is made the —— day of ——, 19—, BETWEEN [*jointress*], of, &c., widow (hereinafter called "the jointress"), of the first part; [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the second part; and [*releasee*], of, &c. (hereinafter called "the releasee"), of the third part: WHEREAS [*recite settlement whereby certain manors*,

Recitals: of settlement;

(*o*) By sect. 70 of the L. P. A. 1925, a release from a rentcharge of part of the land charged does not extinguish the whole rentcharge, but only bars any right to recover any part of the rentcharge out of the land released.

(*p*) Stamp, 10*s*.

XII. RELEASE OF JOINTURE.

lands, and premises were limited to A. B. for life, with remainder to the use that his widow should receive a jointure rentcharge of £——, and limitation of term of —— years to trustees for securing the jointure, with remainders in strict settlement in favour of the issue of A. B., with remainder to use of releasee for his life, with remainders over]; AND WHEREAS the said [A. B.] died on the —— day of ——, 19—, without having had any issue; AND WHEREAS the releasee is the tenant for life in possession of the manors, lands, and premises comprised in the hereinbefore recited settlement, and being desirous of selling such of the same hereditaments as are hereinafter released, has requested the jointress to release the same from her said jointure rentcharge, which she the jointress, being satisfied that the remainder of the said lands and premises on which her said jointure rentcharge is charged is a sufficient security for the same, has consented to do (*pp*); AND WHEREAS the trustees have agreed, at the request of the releasee and with the consent of the jointress, to surrender the said lands and premises hereby released unto the releasee, in manner hereinafter appearing.

of death of tenant for life without issue; of agreement for release; of agreement by trustees to surrender the term.

Release of jointure.

NOW THIS DEED WITNESSETH as follows:—

1. For the purpose of enabling the releasee to effectuate the said sale, and in consideration of the premises, she the jointress hereby releases ALL and singular the messuages, lands, and premises particularly described in the schedule hereto, from the said jointure rentcharge of £—— so charged thereon as aforesaid, AND from all actions, proceedings, accounts, claims, and demands whatsoever, for or in respect thereof, or any part thereof, and all powers and remedies for recovering the same.

Covenant against incumbrances.

2. The jointress hereby covenants with the releasee that she the jointress has not done, omitted, or knowingly suffered or been party or privy to anything whereby she is in anywise hindered from releasing the said lands and premises hereby released, or any part thereof, from the said jointure rentcharge of £——, and the powers and remedies for recovering the same in manner aforesaid.

Surrender by the trustees of the jointure term.

3. In further pursuance of the said agreement, and in consideration of the premises, the trustees, at the request and by the direction and appointment of the jointress, do hereby as trustees surrender unto the releasee, ALL THOSE the messuages, lands, and

(*pp*) See note (*o*), previous page.

premises particularly described in the schedule hereto, with their appurtenances, freed and discharged from the said jointure rentcharge; To the intent that the residue now unexpired of the said term of —— years therein created by the hereinbefore recited settlement may be merged and extinguished in the freehold and inheritance of the same premises (*q*). XII. RELEASE OF JOINTURE.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XIII. RELEASE *by a* MORTGAGEE *under a* MORTGAGE *made prior to* 1926 *of* PART *of* LANDS *in* MORTGAGE *and which it is intended shall be* LAID OUT *as a* BUILDING ESTATE.

THIS RELEASE (*r*) is made the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c., of the one part, and [*mortgagor*], of, &c., of the other part: WHEREAS by a mortgage dated the —— day of ——, 19—, and made between [*parties*], the hereditaments hereinafter described were, together with other hereditaments, conveyed and assured to the use of the said [*mortgagee*], in fee simple by way of mortgage for securing payment to him of the sum of £——, with interest thereon at the rate of —— per cent. per annum (*s*); AND WHEREAS the said sum of £——, together with some interest, is now owing to the said [*mortgagee*] on the security of the said mortgage; AND WHEREAS the said [*mortgagor*] is desirous of laying out and developing the lands and premises hereinafter described as a building estate, and has requested the said [*mortgagee*] to release the said lands from the said mortgage debt, which the said [*mortgagee*], being satisfied that the said sum of £——, and the interest now and hereafter to become due thereon, are sufficiently secured upon the lands now remaining subject to the said mortgage, other than the lands hereinafter described and hereby released, has agreed to do in manner hereinafter appearing. Parties. Recitals: of mortgage; of state of mortgage debt; of agreement for release.

NOW THIS DEED WITNESSETH that, in pursuance of the said agreement, and in consideration of the premises, he the Release.

(*q*) Compare sect. 185 of the L. P. A. 1925.

(*r*) Stamp, 10*s*.

(*s*) This recital, of course, is one of a mortgage created prior to the 1st January, 1926.

XIII. RELEASE BY MORTGAGEE.

said [*mortgagee*], as mortgagee, hereby surrenders and releases unto the said [*mortgagor*], ALL THOSE several messuages and parcels of land, &c. [*describe parcels*] (*t*), TO HOLD the same premises unto the said [*mortgagor*] freed and discharged from all principal moneys and interest secured by and from all claims and demands under or by virtue of the said hereinbefore recited mortgage (*u*), and to the intent that the said mortgage term subsisting in the same premises by reason of the Law of Property Act, 1925, may cease and become merged (*x*).

IN WITNESS, &c.

XIV. RELEASE *by* DEED POLL, *by a* LEGATEE, *of* LANDS *charged with* PAYMENT *of* TWO PECUNIARY LEGACIES.

Recitals: of will bequeathing legacy charged on land;

TO ALL TO WHOM THESE PRESENTS SHALL COME (*y*), [*legatee*], of, &c., sends greeting. WHEREAS A. B. [*testator*], late of ——, by his will dated the — - day of ——, [amongst other things] bequeathed to the said [*legatee*] the sum of [1,500*l.*] and directed that the same, with interest, after the rate of —— per cent. per annum, from the day of his death, should be charged on and payable out of certain lands and hereditaments at ——, in the county of ——, forming part of his real estate; and the said testator by his said will gave and devised the said lands and hereditaments so charged as aforesaid to [*devisee*], of, &c., in fee simple; and the

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(*t*) By virtue of Part VII. of Schedule I. of the L. P. A. 1925, all land which, prior to the coming into force of the Act (viz., the 1st January, 1926), was vested in a first or only mortgagee for an estate in fee simple in possession, legal or equitable, shall as from that date vest in the first or only mortgagee for a term of three thousand years from such commencement, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption subsisting with respect to the fee simple.

(*u*) Under sect. 115 (4) of the L. P. A. 1925, a release may (if desired) be substituted for the statutory form of receipt mentioned in the section. It is conceived that the statutory form of receipt provided for by the section would not be applicable when a portion only of the amount due on the mortgage is paid off and a portion only of the lands charged is released.

(*x*) See sect. 116 of the L. P. A. 1925.

(*y*) Stamp, 10*s*.

said testator thereby appointed [*executors*], executors thereof: AND WHEREAS the testator, by a first codicil dated the —— day of ——, to his said will [amongst other things] bequeathed unto the said [*legatee*], the sum of [1,000*l.*] in addition to what he had given to him by his said will, and to be charged and payable as was directed with respect to the original legacy, and he thereby in all other respects confirmed his said will: AND WHEREAS the testator, by a second codicil dated the —— day of ——, to his said will, appointed [*executor*], of, &c., one of his trustees and executors jointly with those named in his said will; AND WHEREAS the testator died on the —— day of ——, 19—, without having altered or revoked the said two legacies of [1,500*l.*] and [1,000*l.*], so bequeathed to the said [*legatee*], by his said will and first codicil respectively as aforesaid: AND WHEREAS the said will, together with the said two codicils thereto, were proved by the executors named in the said will and the said second codicil thereto respectively, on the —— day of ——, in the Principal [District] Probate Registry: AND WHEREAS the said legacies of 1,500*l.* and 1,000*l.* respectively still remain unpaid: AND WHEREAS the said [*devisee*] being desirous of selling certain portions of the lands and hereditaments particularly described in the schedule hereto, being part of the said lands and hereditaments so devised to him as aforesaid, has requested the said legatee to release the same from the said legacies of [1,500*l.*] and [1,000*l.*] respectively in manner hereinafter appearing, which the said [*legatee*] has consented to do, being satisfied that the residue of the lands and hereditaments on which the said legacies are charged are a sufficient security for the same and the interest thereon respectively.

XIV. RELEASE OF LANDS CHARGED WITH LEGACIES.

and appointing executors; codicil, giving further legacy; second codicil, appointing another executor; death of testator, and probate; legacies still unpaid (*z*).

NOW THESE PRESENTS WITNESS that the said [*legatee*] doth hereby release ALL the several pieces or parcels of land and hereditaments situate at ——, in the county of ——, more particularly described in the schedule hereto [and all other, if any, the lands and hereditaments charged with payment of the said

Testatum. Release.

(*z*) If the legacies have been paid, and it is intended to release all the lands charged with the legacies, omit this and the following recital, and recite that—

"the said legacies of [1,500*l.*] and [1,000*l.*] have been fully paid and discharged as the said [*legatee*] hereby admits,"

and insert the words in brackets in the *testatum*, which must otherwise be omitted.

XIV. RELEASE OF LANDS CHARGED WITH LEGACIES.

legacies or either of them, and the interest thereon respectively, and also the said [*devisee*], and his personal representatives, and also the estate of the said [*testator*], deceased], from the said several legacies or sums of [1,500*l.*] and [1,000*l.*], and the interest now due or hereafter to become due thereon respectively, and every part thereof respectively, and from all actions, proceedings, claims, and demands for or in respect of the same legacies respectively or any part thereof.

IN WITNESS, &c.

THE SCHEDULE HEREINBEFORE REFERRED TO.

XV. RELEASE *of a* RIGHT *of* WAY, *by* INDORSEMENT *on the* DEED *of* GRANT *thereof*.

Parties. Release.

THIS RELEASE (*a*), made the —— day of ——, 19—, BETWEEN the within named [*grantee*], of, &c., of the one part, and the within named [*grantor*], of, &c., of the other part; WITNESSETH that in consideration of £—— now paid by the said [*grantor*] to the said [*grantee*] (the receipt whereof is hereby acknowledged), the said [*grantee*] hereby, as beneficial owner, releases and conveys unto the said [*grantor*], ALL THAT road or way, or right of way by the within written deed granted to the said [*grantee*] into, upon, through, or over the lands shown on the plan drawn in the margin of the within written deed, and therein edged round with blue [and all other easements (*b*), commodities, rights, claims, and privileges whatsoever, which he the said [*grantee*] now has in, over, through, upon, or in respect of the said lands and premises, or any of them], to the intent that the said [*grantor*] shall and may, at all times hereafter, hold and enjoy the same lands and premises, with their appurtenances, free from the said right of way [and all other easements, privileges, rights, claims, and demands whatsoever of or by the said [*grantee*]] (*c*).

IN WITNESS, &c. (*d*).

Stamp.

(*a*) The deed will require an *ad valorem* stamp as a conveyance on sale upon the consideration paid for the release.

(*b*) The effect of these words should be considered, as the releasor may have other easements which he does not intend to relinquish.

(*c*) This easement being a legal easement (sect. 1 (2) (a) of the L. P. A. 1925) need not be registered as a land charge under sect. 10, Class D. (iii), of the L. C. A. 1925.

(*d*) As to rights of way and other easements, see Vol. I. p. 431, note (*s*).

XVI. RELEASE *of a* RIGHT *of* WAY *in* CONSIDERATION *of a* GRANT *of a* NEW RIGHT *of* WAY *over other* LANDS.

XVI. RELEASE OF RIGHT OF WAY IN CONSIDERATION OF GRANT OF ANOTHER RIGHT OF WAY.

THIS DEED (*e*) is made the —— day of ——, 19—, BETWEEN [*releasor*], of, &c., of the one part, and [*releasee*], of, &c., of the other part: WHEREAS by a deed dated the —— day of ——, 19—, and made between [*parties*], full and free right or liberty was granted to the said [*grantee*], his heirs and assigns, and his and their servants and agents, and the tenants and occupiers for the time being of the messuage and farm of the said [*grantee*], called the —— Farm, to use in manner and for the purposes therein mentioned through, along, and over a road or way therein described and delineated in the map or plan annexed to the same deed and also delineated in the map or plan hereunto annexed and thereon coloured [red]; and by the deed now in recital, the said [*grantee*] covenanted with the said [*grantor*] to keep the same road or way in repair as therein mentioned: AND WHEREAS [*recite any changes of ownership which have taken place as regards the dominant and servient tenements, so as to show the title of the present releasor and releasee thereto respectively*]: AND WHEREAS the said [*releasee*] is erecting a mansion house with the stables, garage, outhouses, and buildings appurtenant thereto, and planting and laying out pleasure grounds in and upon the pieces of land described in the hereinbefore recited deed, and now intersected by the road or way the right or liberty to use which was granted to the said [*grantee*] by the same deed as aforesaid, and has accordingly requested the said [*releasor*] to release the said right or liberty in manner hereinafter appearing, in consideration of the grant of a new right of way hereinafter mentioned over other lands of the said [*releasee*] hereinafter described, and the said [*releasor*] being satisfied that such last mentioned right or liberty of way will be fully as convenient to him and to the tenants and occupiers of the said —— Farm as the right or liberty hereby released has agreed to make and execute such release accordingly: NOW THIS DEED WITNESSETH as follows:—

Recitals: of grant of right of way;

of agreement for release, and new grant.

1. In pursuance of the said agreement, and in consideration of

(*e*) This deed should be executed in duplicate: the original deed will require a stamp of 10*s.*; the counterpart will require a stamp of 5*s.*: see Stamp Act, 1891, s. 72.

XVI. RELEASE OF RIGHT OF WAY IN CONSIDERATION OF GRANT OF ANOTHER RIGHT OF WAY.

the conveyance by the said [*releasee*] hereinafter contained, he the said [*releasor*] hereby, as beneficial owner, releases and conveys unto the said [*releasee*], ALL right or liberty of road or way so as aforesaid granted to the said [*grantee*] by the hereinbefore recited deed, upon, through, or over the lands therein mentioned, to the intent that the said [*releasee*] shall at all times hereafter hold and enjoy the same lands, with their appurtenances, free from the said right or liberty of way of or by the said [*releasor*], or any of the tenants or occupiers of —— Farm aforesaid.

Release of right of way.

Grant of new right of way.

2. In further pursuance of the said agreement and in consideration of the premises, he the said [*releasee*] hereby, as beneficial owner, conveys unto the said [*releasor*] full and free right and liberty for the said [*releasor*], and his servants and agents, and the tenants or occupiers of —— Farm aforesaid, at all times hereafter, by night and by day, and for all purposes, to go, return, pass, and repass, with or without horses, carts, waggons, or carriages, traction engines, motor cars, or vehicles [*or*, other than traction engines, or motor cars], whether used for pleasure or for trade purposes [or any vehicles propelled or drawn otherwise than by horse power or by human power] (*f*), laden or unladen, and also to drive cattle, sheep, and other animals in, through, along, and over a new road or way recently formed and fenced off by the said [*releasee*], and indicated by dotted blue lines in the plan hereunto annexed, and which road or way is of the width of —— feet or thereabouts, and —— yards in length or thereabouts, and runs between the points marked A. and B. in the said last mentioned plan to the intent that the right of way hereby granted may become annexed to the said —— Farm: AND the said [*releasor*] hereby covenants with the said [*releasee*] that he the said [*releasor*] will from time to time thenceforth, at his and their own expense, keep repaired and amended in a proper and workmanlike manner the road or way, the right or liberty to use which is hereby granted, and also the gates erected by the said [*releasee*] at the extremities thereof, and will repair and renew the hedge or fence lately planted by the said [*releasee*] on both sides of the said road or way.

Covenant to repair road, &c.

Release of covenant for

3. In consideration of the premises, the said [*releasee*] hereby

(*f*) If the words in the preceding bracket are used, the words in this bracket will be omitted.

releases the said [*releasor*] from the covenant on his part hereinbefore recited or referred to for keeping in repair the said road or way, the right or liberty to use which is hereby released, and all other covenants and agreements on the part of the said [*releasor*] contained in the hereinbefore recited deed of the —— day of ——, 19—; AND ALSO from all actions, proceedings, claims, and demands whatsoever for or by reason of the breach, non-observance, or non-performance of any such covenants or agreements, or for or by reason of any act, matter or thing in anywise relating to the premises.

XVI. RELEASE OF RIGHT OF WAY IN CONSIDERATION OF GRANT OF ANOTHER RIGHT OF WAY.

repair of original road.

IN WITNESS, &c.

See also Release of Power of Revocation, Vol. I., p. 70.

SEPARATION DEEDS (*g*).

PRECEDENTS.

I. DEED *of* SEPARATION, *the* HUSBAND *allowing the* WIFE *an* ANNUITY. COVENANT *by the* WIFE *and* TRUSTEES *to* INDEMNIFY *the* HUSBAND *against the* WIFE'S DEBTS. *Other usual* COVENANTS. PROVISO *vacating the* DEED *on* RECONCILIATION. (*A* CONCISE FORM.)

THIS DEED (*h*) is made the —— day of ——, 19—, BETWEEN [*husband*], of, &c., of the first part; [*wife*], the wife of the said

Parties.

(*g*) As to separation deeds generally, see K. & E., 12th ed., vol. 2; and Vaizey on Settlements; Pollock on Contracts. See also the Summary Jurisdiction (Separation and Maintenance) Act, 1925 (15 & 16 Geo. 5, c. 51).

(*h*) Stamp, 10*s.*, and *ad valorem* duty at the rate of 2*s.* 6*d.* for every 5*l.* or fractional part of 5*l.* payable in respect of the annuity: *Lewis* v. *I. R. Commrs.*, [1898] 2 Q. B. 290. The covenant by the wife not to compel the husband to live with her constitutes a valuable consideration for the husband's covenant, and brings the deed within the exception in sub-sect. 5 of sect. 74 of the Finance (1909-10) Act, 1910, so as to avoid the *ad valorem* stamp as a voluntary disposition *inter vivos* under that section:

I. SEPARATION DEED. *Concise form.*

[*husband*], now residing at, &c., of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part.

Recital of agreement for separation.

WHEREAS unhappy differences have arisen between the said [*husband*] and [*wife*], by reason whereof they have mutually agreed [but at the request of the said [*husband*] *or* [*wife*]] to live separate and apart from each other; and the said [*husband*] has agreed to make to the said [*wife*] an allowance of the annual sum of £——, during the joint lives of herself and the said [*husband*], for her maintenance and support: AND WHEREAS the said [*trustee*] and [*trustee*] have agreed to act as trustees hereof as hereinafter mentioned.

Mutual covenants (*i*).

NOW THIS DEED WITNESSETH that, in pursuance of the said agreement, and for the considerations herein appearing, the said [*husband*], so far as the covenants and stipulations herein contained ought to be performed or observed by him, hereby covenants with the said [*wife*], and, as a separate covenant, with the said [*trustees*] and the said [*wife*], so far as the covenants and stipulations herein contained ought to be performed or observed by her, hereby covenants (*k*) with the said [*husband*], and, as a

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see *Re Weston*, [1900] 2 Ch. 164; and K. & E. 12th ed. A separation by deed implies the consent of the parties and negatives desertion: *Roe* v. *Roe*, [1916] P. 163.

(*i*) The Court will enforce the covenants of a separation deed by specific performance (*Wilson* v. *Wilson*, 1 H. L. C. 538; *Hart* v. *Hart*, 18 Ch. D. 670), or restrain a breach by injunction: *Besant* v. *Wood*, 12 Ch. D. 605; *Hart* v. *Hart*, *sup.* An agreement for future separation cannot be enforced: *Westmeath* v. *W.*, 1 Dow. & Cl. 519; *Hindley* v. *Westmeath*, 6 B. & C. 200; *Westmeath* v. *Salisbury*, 5 Bligh. (N. S.) 339; and see K. & E. 12th ed. vol. 2. Renewal of cohabitation avoids the deed as to provisions in favour of the husband or wife (*Nicol* v. *Nicol*, 31 Ch. D. 524), but it may remain in force as a settlement for the benefit of children if provision is made for them: *Re Spark's Trusts*, [1904] 1 Ch. 451; 2 Ch. 121. See, further, as to separation deeds, Pollock on Contracts; Vaizey on Settlements; and the notes to *Stapilton* v. *Stapilton*, White & Tudor's L. C.

(*k*) This will bind all separate property which she may acquire in the future: see the Married Women's Property Act, 1893, s. 1; and Wolstenholme, 10th ed. pp. 345, 346; K. & E. 12th ed. vol. 2; *Paquin, Ltd.* v. *Beauclerk*, [1906] A. C. 148. The wife can now contract directly with the husband (*Macgregor* v. *Macgregor*, 21 Q. B. D. 424; *Sweet* v. *Sweet*, [1895] 1 Q. B. 12), but it is desirable to have trustees in most cases.

I. SEPARATION DEED. *Concise form.*

separate covenant, with the said [*trustees*]; and the said [*trustees*] respectively, so far as the covenants and stipulations herein contained ought to be performed or observed by themselves, or the said [*wife*], or any of them, hereby covenant with the said [*husband*] as follows, that is to say:—

Wife may live apart from husband.

1. The said [*wife*] may at all times hereafter live separate and apart from the said [*husband*], and free from his marital control and authority, as if she were sole and unmarried, and may from time to time reside at such place or places, and in such manner [and carry on such trade, business or occupation], as she shall think proper, without any interference on the part of the said [*husband*].

Husband and wife not to molest each other, &c.

2. Neither of them the said [*husband*] and [*wife*] shall directly or indirectly molest (*l*) or interfere with the other of them, or compel or endeavour to compel the other of them to cohabit or live with him or her by any legal proceedings for restitution of conjugal rights (*m*), or otherwise howsoever.

Not to take proceedings for divorce or judicial separation for misconduct.

[3. Neither of them the said [*husband*] and [*wife*] shall take any proceedings against the other of them for the purpose of obtaining a divorce (*n*), or judicial separation, in respect of any

(*l*) As to what is "molestation," see *Fearon* v. *Aylesford,* 14 Q. B. D. 792; *Hunt* v. *Hunt,* [1897] 2 Q. B. 304, 547.

(*m*) As to the effect of such a covenant where the husband does not appear to set up the deed in an action for restitution of conjugal rights, see *Tress* v. *Tress,* 12 P. D. 128; *Kennedy* v. *Kennedy,* [1907] P. 49; *Phillips* v. *Phillips,* [1917] P. 90; or in the wife's petition for divorce, *Looker* v. *Looker,* [1918] P. 132.

As to the power of the Court to refuse a decree for restitution under the Matrimonial Causes Act, 1884, see *Walter* v. *Walter,* [1921] P. 302.

(*n*) This clause ought not to be inserted as a matter of course without instructions, but without it the deed will not be a bar to a suit (*Moore* v. *Moore,* L. R. 12 P. 193), as it is if this clause is inserted (*Marshall* v. *M.,* 5 P. D. 19; *Clark* v. *C.,* 10 P. D. 188; *Aldridge* v. *A.,* 13 P. D. 210; but see, as to the wife, *Cahill* v. *C.,* 8 App. Cas. 420), unless the party setting up the deed has, in effect, by his conduct repudiated it: *Balcombe* v. *Balcombe,* [1908] P. 176; and see *Smith* v. *S.,* [1915] P. 288. The covenant to be a bar must be pleaded by the respondent: *Williams* v. *W.,* [1921] P. 131. As to the effect of subsequent acts of misconduct, see *Kunski* v. *Kunski,* 23 L. T. R. 615; and see *Lister* v. *Lister,* [1922] P. 227. As to the full form, see *Rose* v. *Rose,* 7 P. D. 225.

I. SEPARATION DEED. *Concise form.*

misconduct which has or is alleged to have heretofore taken place on the part of the other of them.]

Husband to pay an annuity to wife (*o*).

4. The said [*husband*] shall during the joint lives of himself and the said [*wife*], or until they shall mutually agree to live together again, and so long as the said [*wife*] [shall remain chaste and (*p*)] shall perform and observe the covenants and agreements on her part herein contained, pay to the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being hereof an annuity of £—— in trust for the said [*wife*] as her separate estate, but without power of anticipation, by equal quarterly payments on the usual quarter days, the first of such payments to be made on the —— day of ——, 19—, which annuity shall be apportionable according to law at the commencement and termination thereof (*q*): PROVIDED ALWAYS, that if the said [*wife*] shall survive the said [*husband*], and the said annuity shall not have been forfeited or otherwise determined in his lifetime, then the representatives of the said [*husband*] shall continue to pay such annuity in manner aforesaid until the said [*wife*] shall marry again or die.

Wife to have her chattels for her separate use (*r*).

5. The said [*husband*] shall permit and suffer the said [*wife*] to have, possess, and enjoy for her exclusive use and benefit in the

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(*o*) Sometimes it is arranged that the husband shall make to his wife a weekly allowance, as follows:—

"The said [*husband*] shall, during the joint lives of himself and the said [*wife*], if they shall so long mutually agree to live separately from each other, pay to the said [*wife*], for her separate use, but without power of anticipation, on every Saturday, commencing on the —— day of —— next, the clear weekly sum of £——."

As to whether this form of payment will avoid the payment of *ad valorem* duty, see *Clifford* v. *I. R. Commrs.*, [1896] 2 Q. B. 187; and *Lewis* v. *I. R. Commrs.*, [1898] 2 Q. B. 290; *Underground Electric Rys.* v. *I. R. Commrs.*, [1914] 3 K. B. at p. 221; [1916] 1 K. B. 316.

As to whether the payment of the annuity will continue should the parties resume cohabitation, see *ante*, p. 324, note (*i*).

Dum casta clause.

(*p*) As to the importance of these words, see *Sweet* v. *S.*, [1895] 1 Q. B. 12; *Wastenays* v. *W.*, [1900] A. C. 446.

(*q*) Under the Apportionment Act, 1870 (33 & 34 Vict. c. 35), annuities are considered as accruing from day to day, and are accordingly apportionable in respect of time.

(*r*) No provision is, of course, necessary for the protection of the wife's

same manner in all respects as if she were a *feme sole* all the articles of wearing apparel and personal use and ornament, and all personal property and effects whatsoever now in her possession.

Surviving husband excluded from wife's property (*s*).

6. If the said [*wife*] shall die in the lifetime of the said [*husband*] all her separate estate and property, real and personal, of which she shall not have disposed in her lifetime, or by will, shall, subject to her debts and liabilities, go and belong to the persons or person who would have become entitled thereto if the said [*wife*] had then died intestate and without ever having been married. AND in the same event, the said [*husband*] shall permit her will (if any) to be proved, or administration to her estate and effects to be taken out by the persons or person who would have been entitled so to do if she had then died without ever having been married.

Wife and trustees to indemnify husband against wife's debts (*t*).

7. The said [*wife*] and her personal representatives, and also the said [*trustees*] and their respective personal representatives, shall at all times hereafter keep indemnified the said [*husband*] and his personal representatives, against all the debts and liabilities which the said [*wife*] has already contracted or incurred, or which she shall or may at any time hereafter contract or incur, and against all actions, proceedings, accounts, claims, demands, costs, charges, losses, damages, and expenses for or on account of such debts or liabilities, or anything in anywise relating to the premises.

Husband if called on to pay wife's debts may deduct amount from annuity.

8. In case the said [*husband*] shall at any time or times hereafter be called upon to pay or discharge, and shall actually pay or discharge, any debt or liability which the said [*wife*] has already contracted or incurred, or which she shall or may at any time hereafter contract or incur, then and in every such case it shall be lawful for the said [*husband*] to deduct, retain, and reimburse to himself out of the said annuity of £—— the amount which he

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separate property, unless she, having married before 1883, wishes to dispose of freehold or leasehold property, in which case the husband must divest himself of the legal estate, so that she may be able to convey the legal estate as well as the beneficial interest without his concurrence; but this should be done by a separate deed to avoid bringing the separation deed on the title.

(*s*) See *Allen* v. *Humphrys*, L. R. 8 P. D. 16.

(*t*) The wife has no implied authority to pledge her husband's credit after a separation deed: see *Eastland* v. *Burchell*, L. R. 3 Q. B. D. 432.

1. SEPARATION DEED. *Concise form.*

the said [*husband*] shall have so paid in respect of such debt or liability, together with all costs and expenses which he shall have paid or incurred on account thereof; but so that this present proviso shall not render the said [*husband*] liable to the payment of any debts of the said [*wife*], or prejudice any right or remedy of the said [*husband*] under the covenant for indemnity of the said [*trustees*] hereinbefore contained.

Provision for reconciliation or divorce.

9. PROVIDED ALWAYS, that in case the said [*husband*] and [*wife*] shall at any time hereafter with their mutual consent come together, and cohabit with each other (*u*) [or if their marriage shall be dissolved or if they shall be judicially separated from each other in respect of anything done or suffered by either party after the execution of these presents], then and in such case [*or*, then and in either of such cases] the said annuity of £—— shall cease and be no longer payable, and thenceforth all the covenants and provisions herein contained shall become void, but without prejudice to any act previously done hereunder, or any proceedings on the part of any of the parties hereto in respect of any breach then previously committed of all or any of the said covenants or provisoes.

Power to appoint new trustees.

10. The statutory power of appointing new trustees of these presents in the place of the said [*husband's trustee*] or any trustee to be appointed in his place shall be vested in the said [*husband*], and the statutory power of appointing new trustees in the place of the said [*wife's trustee*] or any trustee to be appointed in his place shall be vested in the said [*wife*].

IN WITNESS, &c.

(*u*) As to what amounts to cohabitation, see *Rowell* v. *Rowell*, [1900] 1 Q. B. 9. See also, as to this clause, *Ruffles* v. *Alston*, 19 Eq. 539; *Re Spark*, [1904] 1 Ch. 451; *Lipman* v. *Lipman*, [1916] P. 25.

II. DEED *of* SEPARATION *between* HUSBAND *and* WIFE. SPECIAL CLAUSE *against* MOLESTATION *by* HUSBAND *or* WIFE. SETTLEMENT *by the* HUSBAND *of a* SUM *of* STOCK *for the benefit of the* WIFE, *for her* LIFE, *with* REMAINDERS *for the benefit of* HERSELF *and the* CHILDREN *of the* MARRIAGE. PROVISIONS *as to the* CUSTODY, MAINTENANCE, *&c. of* CHILDREN. *Usual* INDEMNITY CLAUSE *by* TRUSTEES.

II. SEPARATION DEED, PROVIDING FOR SETTLEMENT OF PROPERTY, AND CUSTODY OF CHILDREN.

THIS DEED (*x*) is made the —— day of ——, 19—, BETWEEN [*husband*], of, &c., of the one part; [*wife*], of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part. Parties.

WHEREAS the marriage between the said [*husband*] and [*wife*], his wife, took place on or about the —— day of ——, 19—, and there is issue of the marriage —— children, namely [*state names of children*]. Recitals: of marriage and birth of children;

AND WHEREAS unhappy differences have arisen between the said [*husband*] and [*wife*], in consequence whereof they have mutually agreed to live separate and apart from each other, and to enter into the arrangement hereinafter contained. of agreement for separation;

AND WHEREAS, as part of such arrangement, the said [*husband*] has this day transferred into the names of the said [*trustees*] a sum of £—— [Preference Stock in the —— Railway Company], the property of him the said [*husband*] (hereinafter called ["the said Preference Stock")], To the intent that they shall stand possessed thereof, and the dividends, interest, and annual produce upon such trusts, as are hereinafter declared of and concerning the same. of transfer of stock to trustees;

AND WHEREAS the said [*trustees*] have, at the request of the said [*husband*] and [*wife*], agreed to act as trustees of these presents for the purpose of the arrangements intended to be hereby made, and to enter into the covenants on their part and stipulations hereinafter contained. of agreement of trustees to act.

(*x*) It would seem that the deed should bear a 10*s.* stamp, and also an *ad valorem* stamp as a settlement at the rate of 5*s.* for every 100*l.* or fractional part of 100*l.* settled, and not the *ad valorem* stamp under sect. 74 of the Finance (1909-10) Act, 1910: see *ante*, p. 323, note (*h*); but the stamp should be adjudicated.

II. SEPARATION DEED, PROVIDING FOR SETTLEMENT OF PROPERTY, AND CUSTODY OF CHILDREN.

Testatum.

NOW THIS DEED WITNESSETH that, in pursuance of the said agreement, and for the consideration herein appearing, the said [*husband*], so far as the covenants and stipulations herein contained ought to be performed or observed by him, hereby covenants with the said [*wife*], and as a separate covenant with the said [*trustees*]; AND the said [*wife*], so far as the covenants and stipulations herein contained ought to be performed or observed by her, hereby covenants with the said [*husband*], and as a separate covenant with the said [*trustees*]; AND the said [*trustees*], so far as the covenants and stipulations herein contained ought to be performed or observed, on the part of the said [*wife*], or of them the said [*trustees*], or any of them, hereby respectively covenant with the said [*husband*] as follows, that is to say:—

Wife may live apart from husband.

1. [*Proviso that the wife may live apart from her husband, Precedent I., cl.* 1, *p.* 325.]

Covenant against molestation by husband.

2. The said [*husband*] shall not, nor will molest, disturb, or interfere with the said [*wife*] in her manner of living or otherwise, or compel or endeavour to compel her to cohabit or live with him by any legal proceedings for restitution of his conjugal rights or otherwise howsoever, or sue, prosecute, or in any way molest or disturb any member or members of her family or any other person or persons for receiving, harbouring, protecting, or assisting her.

Covenant against molestation by wife.

3. The said [*wife*] shall not, nor will molest, disturb, or interfere with the said [*husband*], nor at any time or times hereafter commence or institute any action or proceedings for restitution of conjugal rights, or compel or attempt to compel him to allow to her any alimony or maintenance for herself, or the said children, other than such allowance as is hereinafter provided.

Mutual covenants against proceedings for divorce, &c.

4. No proceedings shall be instituted or prosecuted by or on behalf of either of them the said [*husband*] and [*wife*] against the other of them for the purpose of obtaining a divorce or judicial separation, or otherwise in respect of any cause of complaint which now exists or has arisen before the date of these presents; and all misconduct (if any) which has been committed or permitted by either of them against the other shall be deemed to have been hereby forgiven and condoned; AND in case at any time hereafter any proceedings shall be instituted or prosecuted by either of them against the other in respect of any cause of complaint which may arise hereafter, no misconduct which has, or is

alleged to have been committed or permitted before the execution of these presents, nor any act, matter, or thing relating to any such misconduct, shall be pleaded, or alleged, or admitted in evidence.

II. SEPARATION DEED, PROVIDING FOR SETTLEMENT OF PROPERTY, AND CUSTODY OF CHILDREN.

5. The said [*trustees*] and the survivor of them, and the personal representatives of such survivor, or other the trustees or trustee for the time being of these presents (hereinafter collectively referred to as "the said trustees or trustee"), shall either allow the said [Preference Stock], or any part thereof, to remain in the actual state of investment thereof, or shall at any time or times, with the consent of the said [*husband*] and [*wife*], during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the said trustees or trustee, sell the same or any part thereof, and invest the proceeds of such sale in their or his names or name in or upon any stocks, funds, or securities hereby authorised; AND may from time to time, with such consent and at such discretion as aforesaid, transpose the said investments into others of any nature hereinafter authorised.

Trust for investment.

6. The said trustees or trustee shall stand possessed of the said [Preference Stock] or the investments for the time being representing the same, and dividends, interest, and income thereof respectively, upon the trusts following, that is to say: In trust to pay unto the said [*wife*] or allow her to receive the income of such trust fund during her life, but without power of anticipation, as well for the maintenance and support of herself as for the maintenance, clothing, and education of the said [*children*] during their respective minorities: AND from and after the death of the said [*wife*], if she shall die in the lifetime of the said [*husband*], then in trust to pay unto the said [*husband*], or allow him to receive the income of the said trust fund during his life; AND from and after the death of the survivor of them the said [*husband*] and [*wife*] shall stand possessed of the capital and future income of the said trust fund, in trust for such one or more of the said [*children*] as, being sons or a son, shall attain the age of twenty-one years, or being daughters or a daughter, shall attain that age or marry under that age, and if more than one in equal shares; but if all the said children shall die before attaining a vested interest in the said trust fund, then the trustees or trustee for the time being shall,

Trusts of settled fund.

II. SEPARATION DEED, PROVIDING FOR SETTLEMENT OF PROPERTY, AND CUSTODY OF CHILDREN.

from and after the death of the said [*husband*], stand possessed of the capital and future income of the said trust fund [or of so much thereof as shall not have been applied under any of the trusts herein expressed], as to one equal moiety of such capital and income, in trust for the said [*husband*] absolutely; AND as to the other equal moiety thereof, upon and for such trusts, interests and purposes as the said [*wife*] shall by deed, will, or codicil appoint, and in default of and subject to any such appointment upon trust for the persons entitled on the death of the said [*wife*] according to the Administration of Estates Act, 1925, as if she had died intestate and without ever having been married.

7. [*Advancement clause, if desired: but see* post, *p.* 340, *note* (*o*).]

8. [*Wife to have her chattels for her separate use: see Precedent I., cl.* 5.]

9. [*Surviving husband excluded from wife's property: see Precedent I., cl.* 6.]

Wife to have custody of children (*y*).

10. The said [*wife*] shall have the sole custody and control of and over all and every of the said [*children*] and of their education and bringing up, until they shall respectively attain the age of —— years, without any interference on the part of the said [*husband*].

Provision as to maintenance of children (*z*).

11. The said [*wife*] hereby accepts the provision made as aforesaid by clause 6 hereof as ample and sufficient for the maintenance and support of herself, and for the maintenance, clothing, and education of the said [*children*] until they shall respectively attain the age of —— years, and the said [*wife*] shall accordingly provide and pay for the maintenance, clothing, and education of all and every of the said [*children*] until they shall attain that age out of her own moneys, including the income of the said trust fund hereby made payable to her during her life as aforesaid. [But the

(*y*) This agreement is valid under the Custody of Infants Act, 1873, s. 2, subject to the discretionary power of the Court under sect. 5 of the Guardianship of Infants Act, 1886, as amended by the Guardianship of Infants Act, 1925 (15 & 16 Geo. 5, c. 45), s. 3. And see also sect. 7, *ibid.*, as to the meaning of the expression "the Court." As to the exercise of a discretion, see *Re A. and B.* (*Infants*), [1897] 1 Ch. 786.

(*z*) As to the liability of a married woman having separate property to maintain her children and grandchildren, see Married Women's Property Act, 1882, s. 21.

said [*husband*] shall pay the funeral expenses of any child who shall die while residing or being with or under the control of the said [*wife*].]

Provision as to education, &c. of sons (*a*).

12. The said [*male children*] shall, as soon as they shall respectively attain the age of —— years, be placed at the expense of the said [*husband*] at such schools in England [Great Britain], or with the previous consent in writing of the said [*wife*] [*or, if preferred,* of the said trustees or trustee] elsewhere, as he shall from time to time think fit; and shall thereafter pass their holidays or any other interval of time during which they shall not be at any school, at such places and in such manner as the said trustees or trustee shall from time to time direct, having regard to the reasonable wishes of the said [*husband*] and [*wife*].

Provisions as to education, &c. of daughters.

13. The said [*wife*] shall have full liberty at her own expense either to place all and every of the said [*female children*] at such schools in England [or elsewhere], as she shall from time to time think fit, or to keep them in her own custody, and maintain and educate them until they shall respectively attain the age of twenty-one years or marry under that age, at such place or places in England [or elsewhere], as she may from time to time reside in: AND such of them the said [*female children*], as shall for the time being be at such school, shall pass their holidays with the said [*wife*], or with such persons or person as she shall from time to time direct.

Access to children (*b*).

14. The said [*husband*] and [*wife*] respectively shall at all reasonable and convenient times (to be fixed by the trustees in case of dispute) have access to and communication with the children or child for the time being living with or under the control of the other of them or at school.

Covenant for indemnity of husband against wife's debts.

15. The said [*wife*], or her personal representatives, and also the said trustees or trustee, and their or his respective personal representatives, shall, at all times hereafter, effectually keep indemnified the said [*husband*], or his personal representatives, estate, and effects, from all debts and liabilities which the said [*wife*] shall or may hereafter contract or incur, and from and against all actions, proceedings, accounts, claims, demands, costs, charges, losses,

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(*a*) See *Gandy* v. *Gandy,* 30 Ch. D. 57.

(*b*) This does not prevent the parent from taking the children abroad: see *Hunt* v. *Hunt,* 28 Ch. D. 606.

II. SEPARATION DEED, PROVIDING FOR SETTLEMENT OF PROPERTY, AND CUSTODY OF CHILDREN.

damages, and expenses whatsoever, for or on account of any such debts or liabilities.

Covenant for further assurance.

16. Each of them, the said [*husband*] and [*wife*], or their respective personal representatives, shall, at all times hereafter, execute and do all such assurances and things as the other of them, or his or her personal representatives, or the said trustees or trustee, shall reasonably require, for the purpose of giving full effect to these presents and the covenants, stipulations, and provisions herein contained.

Provision for reconciliation, &c.

17. [*Provision for reconciliation, divorce, &c.*, ante, *p.* 328; *and continue, if such is the intention, as follows:*] And in such

Clause as to destination of settled fund on reconciliation.

case the trustees or trustee for the time being of these presents shall stand possessed of and interested in the said trust fund, and the income thereof or so much thereof as shall not have been applied or disposed of, under or by virtue of these presents upon trust for the said [*husband*] absolutely, or as he shall direct.

18. [*Investment clause, see Settlements*, post, *pp.* 348—352.]

Provision as to appointment of new trustees.

19. The power of appointing a new trustee in the place of the said [*husband's trustee*], or of any trustee to be appointed in his place, shall be vested in the said [*husband*]; and the power of appointing a new trustee in the place of the said [*wife's trustee*], or of any trustee to be appointed in his place shall be vested in the said [*wife*].

In witness, &c.

PERSONAL SETTLEMENTS.

I. OF STOCK BELONGING TO WIFE AND LIFE POLICY OF THE HUSBAND.

PRECEDENTS.

I. SETTLEMENT (*a*) *on* MARRIAGE *of* STOCK *belonging to* WIFE. INCOME *to be* PAID *to* WIFE *without* POWER *of* ANTICIPATION *for her* LIFE; *and after her* DEATH *to* HUSBAND *for his* LIFE. TRUSTS *for* ISSUE, *and usual* CLAUSES. ULTIMATE TRUST *for* WIFE *in default of* ISSUE. COVENANT *to* SETTLE AFTER-ACQUIRED PROPERTY. POWER *for* WIFE, *on* FUTURE MARRIAGE, *to* WITHDRAW FUNDS *from* SETTLEMENT *in* PROPORTION *to* NUMBER *of* CHILDREN *of* INTENDED MARRIAGE. SETTLEMENT *by* HUSBAND *of* POLICY *of* ASSURANCE *on his own* LIFE [*or*, PAYABLE *at a* FIXED DATE (*b*). TRUSTEE CLAUSES.

THIS SETTLEMENT (*c*), made the —— day of ——, 19—, BETWEEN [*intended husband*], of, &c. (hereinafter called "the Parties.

(*a*) As to wills made after 1925 before and in contemplation of marriage, see L. P. A. 1925, s. 177.

(*b*) Notice of the settlement should be given to the insurance company. As to the power of a woman married since 1882, or a woman married before 1883, so far as relates to property acquired since 1882, to deal with her property and to contract as a *feme sole*, see the Married Women's Property Acts, 1882, 1893, 1907 and 1908. A number of changes have been introduced in the law affecting married women. The L. P. A. 1925, s. 167, abolishes the necessity of acknowledgments by married women; dispositions requiring acknowledgments heretofore become effectual with the concurrence of the husband, if his concurrence was necessary, before January 1st, 1926. Money or property may be paid or transferred by or out of Court to a married woman without a separate examination, and the Court may dispense with the husband's concurrence in certain cases if the wife is entitled to the property as part of her separate estate; and by sect. 168, a married woman can disclaim any estate or interest in land if it is her separate property, or a trust, without the husband's concurrence. Sect. 169 repeats sect. 7 of the C. A. 1911, enabling the Court to bind a married woman's interest in any property which she is restrained from anticipating: and see S. L. A. 1925, ss. 1, 20, and 25 as to settled land. By sect. 170, L. P. A. 1925, a married woman may acquire or dispose of property as a trustee or personal representative, from or to anyone, including her husband, as if she were a *feme sole*. M. W. P. Acts.

(*c*) Stamp, 5*s*. per 100*l*. (see Stamp Act, 1891, sched. "Settlement") Stamp.

I. OF STOCK BELONGING TO WIFE AND LIFE POLICY OF THE HUSBAND.

husband "), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), spinster, of the second part; and [*trustee*], of, &c., [*trustee*], of, &c., and [*trustee*], of, &c., of the third part: WHEREAS a marriage is intended shortly to be solemnized between the husband and wife (*d*): AND WHEREAS, pursuant to an agreement made upon the treaty for the said intended marriage, the sum of £—— $2\frac{1}{2}$ per cent. Consolidated Stock, belonging to the wife has been transferred into the names of the said [*trustees*], to be held by them in trust for the said wife until the said intended marriage, and thereafter upon the trusts, and with and subject to the powers and provisions hereinafter declared of and concerning the same. AND WHEREAS upon the treaty for the said intended marriage it was agreed that these presents should contain such provision as is hereinafter contained for settling the other or future acquired property of the wife, except as hereinafter mentioned.

Recitals: of intended marriage; of transfer of stock to trustees; of agreement for settlement of wife's after-acquired property.

Title to, and agreement to settle policy on husband's life.

AND WHEREAS the husband is absolutely entitled to a policy of assurance effected in his own name for the sum of £——, payable on his death [*or*, on the —— day of ——, whichever shall be the earlier], with the —— Assurance Society, dated, &c., and numbered ——, and under the annual premium of £——, and upon the treaty for the said intended marriage it was agreed that the same policy and the moneys to become payable thereunder should be settled in manner hereinafter appearing (*e*).

Testatum.

NOW THIS DEED WITNESSETH that, in pursuance of

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on the value according to the average price on the day of the date of the settlement (see Stamp Act, 1891, s. 6) of the stock brought into settlement, and 10*s.* in respect of the covenant to settle after-acquired property, and a further *ad valorem* duty at 5*s.* per 100*l.* on the amount of the policy: see Stamp Act, 1891, s. 104; *Duke of Northumberland* v. *I. R. Commrs.*, [1911] 2 K. B. 1011. As to estate duty on policy, see *Lethbridge* v. *Att.-Gen.*, [1907] A. C. at p. 23. Marriage settlements are not affected by the Finance (1909-10) Act, 1910. The stamps should be adjudicated in all cases where value has to be ascertained.

(*d*) As to marriage with a deceased wife's sister, see *Phillips* v. *Probyn*, [1899] 1 Ch. 811; Deceased Wife's Sister's Marriage Act, 1907; and *Re Whitfield*, [1911] 1 Ch. 310.

(*e*) By sect. 136 (2) of the L. P. A. 1925, which re-enacts sect. 25 (6) of the Judicature Act, 1873, as to assignments of choses in action, the provisions of the Policies of Assurance Act, 1867, are expressly preserved.

the said agreement, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

I. OF STOCK BELONGING TO WIFE AND LIFE POLICY OF THE HUSBAND.

Declaration of trusts of stock; trust for investment;

1. The said [*trustees*], their executors, administrators, and assigns, shall stand possessed of the said sum of £—— $2\frac{1}{2}$ per cent. Consolidated Stock, in trust for the wife until the solemnization of the said intended marriage; AND thereafter upon trust that the said [*trustees*], or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall either allow the said stock to remain in its present state of investment so long as the trustees or trustee may think fit, or shall, at any time or times, with the consent in writing of the husband and wife, during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor, at the discretion of the trustees or trustee, sell the same stock, or any part thereof, and invest the proceeds of such sale or sales in the names or name of the trustees or trustee, in or upon any stocks, funds, or securities hereby authorised: AND may from time to time, with such consent or at such discretion as aforesaid, vary or transpose any of the said investments into others of any nature hereinafter authorised.

power to vary investments.

Trust of income for wife during joint lives of herself and husband without power of anticipation (*f*).

2. The trustees or trustee shall, during the joint lives of the husband and wife, pay the income of the said sum of £—— $2\frac{1}{2}$ per cent. Consolidated Stock, and of the investments for the time being representing the same (hereinafter called "the wife's fund"), unto the wife without power of anticipation (*g*).

(*f*) If it is desired that the husband shall take a determinable life interest only, the following clauses may be substituted for clauses 2 and 3 in the text:—

"The trustees or trustee shall pay the income of the said sum of £—— $2\frac{1}{2}$ per cent. Consolidated Stock, and of the investments for the time being representing the same (hereinafter called 'the wife's fund'), to the wife during her life without power of anticipation.

"After the death of the wife, if the husband shall survive her, then the trustees or trustee shall hold the said income during the life of the husband on protective trusts for his benefit for the period of his life within the meaning of sect. 33 of the Trustee Act, 1925."

(*g*) It is no longer necessary to insert the words "for her separate use."

I. OF STOCK BELONGING TO WIFE AND LIFE POLICY OF THE HUSBAND.

3. From and after the death of such one of them, the husband and wife, as shall first die (*h*), the trustees or trustee shall pay the income of the wife's fund to the survivor of them, and his or her assigns, during his or her life, but so that the wife shall not during coverture have power to anticipate such reversionary life interest.

Trust for survivor for life; remainder for issue as husband and wife shall appoint (*full form*);

4. From and after the death of the survivor of them, the husband and wife, the trustees or trustee shall stand possessed of the wife's fund and the income thereof, in trust for all or such one or more exclusively of the others or other (*i*) of the children or remoter issue of the said intended marriage [such remoter issue to be born and take vested interests within twenty-one years from the death of the survivor of them, the husband and wife (*k*)], at such age or time or respective ages or times, and if more than one in such shares, and with such future, executory, or other trusts for the

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but the restraint on anticipation is useful as a protection against the husband's influence: see *Re Lumley*, [1896] 2 Ch. 690; and see note (*b*), *ante*, p. 335.

As to how the restraint may be released during discoverture, see *Re Chrimes*, [1917] 1 Ch. 30.

As to determinable trusts in favour of a husband, see Elph. Introd. 6th ed. 360; Vaizey on Settlements, 947. The life interest of a husband in his own property may be determined on voluntary alienation (not on bankruptcy): see *Brooke* v. *Pearson*, 27 Beav. 181; *Knight* v. *Browne*, 30 L. J. 649; *Re Perkins*, [1912] W. N. 99. See, too, K. & E. 10th ed. vol. 2, p. 581, note (*e*), and p. 584, note (*b*).

As to the indefeasibility of the trustee's title to the life interest of a bankrupt, see *Re Burroughes Fowler*, [1916] 2 Ch. 251.

(*h*) As to estate duty, see *Att.-Gen.* v. *Wood*, [1897] 2 Q. B. 102; *Att.-Gen.* v. *Glossop*, [1907] 1 K. B. 163.

(*i*) These words of exclusion are no longer necessary: see L. P. A. 1925, s. 158.

(*k*) The insertion of the words in brackets is useful as a reminder of the rule against perpetuities, but it is not necessary, and the words may be omitted, if desired. An appointment under a power not so restricted will be good, provided the appointment does not itself violate the rule against perpetuities. The power must be exerciseable within, and not beyond, the limit of the rule: see *Re De Sommery*, [1912] 2 Ch. 622. By the L. P. A. 1925, s. 163, where a gift would be void for remoteness because the vesting of property is made to depend on the attainment of an age exceeding twenty-one years, the gift is to be read as if the age of twenty-one years were substituted for the specified age in the gift.

benefit of the said issue, or some or one of them, and with such provisions for the maintenance, education, advancement, and benefit of such children or issue or some or one of them, either after the death of the husband and wife, or during their joint lives, or the life of the survivor of them, with their, his, or her consent in writing, at the discretion of the trustees or trustee, or of any other person or persons, and subject to such restrictions, conditions, and provisions, and generally in such manner in all respects (*l*) as the husband and wife shall by any deed or deeds, revocable or irrevocable, jointly appoint; AND in default of such joint appointment, and so far as no such appointment shall extend, then, as the survivor of them shall in like manner, or by will or codicil appoint; AND in default of any appointment under either of the powers hereinbefore contained, and so far as no such appointment shall extend, in trust for all the children or any the child of the said intended marriage, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry [with the consent of her parents or parent, or guardians or guardian], and if more than one in equal shares.

I. OF STOCK BELONGING TO WIFE AND LIFE POLICY OF THE HUSBAND.

remainder as survivor shall appoint;

trust, in default of appointment, for children equally at twenty-one or marriage;

5. PROVIDED ALWAYS, that no child who or whose issue shall take any part of the wife's fund by virtue of any appointment made under either of the powers lastly hereinbefore contained shall, in the absence of an express declaration to the contrary in any such appointment, take any share of the unappointed part of the wife's fund without bringing the appointed share or shares into hotchpot and accounting for the same accordingly.

hotchpot clause (*m*);

6. [*Maintenance clause* (*n*), *and advancement clause* (*o*).]

Maintenance and advancement clauses.

(*l*) A shorter form of such a power may be used, as follows:—

"In trust for all or any of the children or remoter issue of the said intended marriage in such shares and with such provisions and generally in such manner in all respects as the husband and wife shall," &c., *as above*.

Short form of trust for issue.

(*m*) The value of an appointed share is to be ascertained at the death of the tenant for life: *Re Kelly*, [1910] 1 Ch. 78.

(*n*) Express powers for maintenance, education and accumulation of

(*o*) See note (*o*), next page.

I. OF STOCK BELONGING TO WIFE AND LIFE POLICY OF THE HUSBAND.

7. If there shall be no child of the said intended marriage who, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry [with such consent as

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Ultimate trusts for wife, in default of issue.

surplus may now generally be omitted in reliance on the statutory provisions.

The provisions of sect. 31 of the T. A. 1925, go beyond sect. 43 of the C. A. 1881, (a) by extending the benefit of maintenance to any interest whatsoever, whether vested or contingent, except interests under limitations or trusts which do not carry the intermediate income (as to intermediate income, see L. P. A. 1925, s. 175; and also sect. 31 (3) of the T. A. 1925); and (b) by prolonging maintenance after the beneficiary has attained twenty-one years of age if he has not a vested interest in the income, and the provision of the section apply to a vested annuity. Detailed regulations govern accumulations of income during minority, and the section also provides for the amount or proportion of income which is to be applied to maintenance.

Power of advancement.

(*o*) Express clauses for advancement may be omitted in the case of personal settlements or settlements on trust for sale. Sect. 32 of the T. A. 1925, confers full powers of advancement in settlements created after 1925 up to one-half of the presumptive or vested share of the beneficiary, and subject to consent in writing by any person entitled to a prior life or other interest, whether vested or contingent, but only in the cases of personal settlements, or under trusts for sale, where the proceeds are not by statute or equity considered to be land or applicable as capital money for the purposes of the S. L. A. 1925. The power of advancement is not restricted to the period of infancy.

Meaning of express powers of advancement.

It would seem that an advancement ought to be made with a view to some permanent provision for the object as opposed to a small or merely temporary benefit. The precise terms of the power will be looked at in each case: see *Lowther* v. *Bentinck*, L. R. 9 Eq. 166; *Lloyd* v. *Cocker*, 27 Beav. 645; *Roper Curzon* v. *Roper Curzon*, L. R. 11 Eq. 452. If the settlement is not purely personal within the meaning of sect. 32 of the T. A. 1925, the following clause may be used:—

"The trustees or trustee may at any time or times after the death of the husband and wife, or in their, his, or her lifetime, with their, his, or her consent in writing, raise any part or parts, not exceeding in the whole one-half of the then vested, contingent, presumptive, or expectant share, of any child or remoter issue of the said intended marriage in the wife's fund under the trusts hereinbefore contained, and pay or apply the same in or towards the advancement, or otherwise for the benefit of such child or remoter issue in such manner as the trustees or trustee shall think fit."

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aforesaid], then, subject and without prejudice to the trusts and powers hereinbefore declared and contained, or by law vested in the trustees or trustee, the trustees or trustee shall stand possessed of the wife's fund and the income thereof, or so much thereof as shall not have become vested or been applied under any of such trusts or powers, upon the trusts following, that is to say: In trust for such person or persons, and for such purposes as the wife shall, during coverture by will or codicil, or when not under coverture by any deed or deeds with or without power of revocation and new appointment, or by will or codicil appoint; AND in default of such appointment, and so far as no such appointment shall extend, upon the trusts following, that is to say, if the wife shall survive the husband, then in trust for the wife absolutely (*p*), but so that she shall not during coverture have power to anticipate such reversionary absolute interest; but if the husband shall survive the wife, then in trust for such person or persons as would have become entitled thereto under the Administration of Estates Act, 1925 (*q*), in regard to the distribution of the effects of intestates had she died possessed thereof intestate and without ever having been married, such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statute.

(*p*) A settlement on the wife's next of kin under the Statutes of Distribution in the form suggested in note (*q*), *infra*, may be preferred. In that case the words

"and without ever having been married,"

are unnecessary and may be omitted.

(*q*) Owing to the extremely narrow range of intestate distribution under the A. E. A. 1925, and the possibility of an early escheat of the property to the Crown, it may be advisable (especially where the wife's members of the immediate family are few in number) to extend the range of beneficiaries as follows:—

"For such person or persons who, if the statutes for the distribution of the effects of intestates in force on the 31st December, 1925, had remained unaffected, would have become entitled under the said statutes at the date of the death of the wife to the trust funds, had she died possessed thereof intestate and without ever having been married, such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes."

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Covenant to settle after-acquired property (*r*).

8. The wife hereby covenants with the said [*trustees*] that if the said intended marriage shall be solemnized, and if the wife shall then be, or if she or the husband in her right shall, at any time during the now intended coverture, become seised, possessed of, or entitled to, or acquire an absolute power of disposition over any real or personal property (other than the property hereby settled), either in possession, reversion, contingency, or expectancy (*s*), except property of a less value than £—— vesting in possession before or during the said intended coverture, from any one source, at any one time, and except any estate or interest to which she shall be or become entitled for her life only, or for a less period, and except jewels, trinkets, ornaments, plate, pictures, prints, books, furniture, and other moveable chattels, and except any property given by the husband to the wife (*t*) (which excepted premises it is hereby agreed and declared shall belong to her absolutely, and, as to any such life estates or interests as aforesaid, without power of anticipation), and except any property as to which the donor, settlor, or testator, from whom the same shall be acquired, shall indicate an intention that the same shall not fall under the operation of such an agreement or stipulation as this present

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(*r*) As to the duties of trustees under such covenants, see *Ex parte Geaves*, 8 De G. M. & G. at p. 309. The Inland Revenue authorities claim *ad valorem* duty on property belonging to the wife at the time of the settlement, so the covenant should be restricted to property belonging to her at the time of the marriage, or afterwards accruing, as it is not then a settlement of a certain and definite sum. As to property of the wife coming to the husband after her death, see *Fisher* v. *Shirley*, 43 Ch. D. 290; *Re Coghlan*, [1894] 3 Ch. 76. A mere *spes successionis* is not caught by the covenant: *Re Simpson*, [1904] 1 Ch. 1; *Re Mudge*, [1914] 1 Ch. 115. As to whether a share of personal estate comprising furniture, &c. is caught by this covenant, see *Lt. Sudeley* v. *A.-G.*, [1897] A. C. 11; *Vanneck* v. *Benham*, [1917] 1 Ch. 60.

As to the effect of sect. 13 of the Bankruptcy Act, 1913, repealed and re-enacted by sect. 42 of the Bankruptcy Act, 1914, on a settlement or contract for settlement of after-acquired property, see *Re Bulteel's Settlement*, [1917] 1 Ch. 251.

Volunteers not within the marriage consideration cannot enforce the covenant: see *Re D'Angibau*, 15 Ch. 228, 242; *Pullan* v. *Roe*, [1913] 1 Ch. 915; *Re Pryce*, [1917] 1 Ch. 234.

(*s*) See *Re Bland*, [1905] 1 Ch. 4.

(*t*) See *Leigh White* v. *Ruttledge*, [1914] 1 I. R. 135.

agreement (*u*), then, and so often as the same shall happen, the wife and all other necessary parties, shall, at the cost of the trust estate, from time to time as soon as circumstances will admit, effectually settle and assure such other present or after-acquired property, save as aforesaid, or cause the same to be effectually vested in the said trustees or trustee, upon trust with all convenient speed and in such manner as the trustees or trustee shall think fit to sell or convert the same into money, and to stand possessed of the proceeds of such sale or conversion upon the same trusts, and with and subject to the same powers and provisions, as are herein declared of the wife's fund: [PROVIDED ALWAYS, that it shall not be obligatory on the said trustees or trustee to convert into money any other present or after-acquired property of the wife which is of a reversionary nature whilst the same shall continue reversionary] (*x*): [AND PROVIDED ALWAYS, that the said trustees or trustee shall not be accountable or liable in respect of any real or personal property which may become subject to the agreement in the present clause contained for the settlement of the other and after-acquired property of the wife, unless or until the same shall have been actually and effectively assured, paid, or transferred to them or him; nor shall they or he be liable for any omission or delay in taking proceedings to enforce the said agreement, or to get in the said property, or any part thereof, respectively].

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Declaration of trusts of after-acquired property.

Proviso as to reversionary property.

Indemnity to trustees.

9. IT IS HEREBY AGREED AND DECLARED if the wife shall survive the husband, it shall be lawful for the wife, either in contemplation of or after any future marriage, by any deed or deeds, with or without power of revocation and new appointment, or by will, or codicil, to appoint in favour of any after-taken husband, and of her child, children, and issue by him, such part as is hereinafter mentioned, or any less part of the property hereby settled and agreed to be settled by the wife, that is to say: if there shall not be more than one child of the now intended marriage, who

Power for intended wife to withdraw funds from settlement in proportion to the number of the children of the intended marriage and to appoint to a future husband, and in favour of her issue by him (*y*).

(*u*) See *Scholfield* v. *Spooner*, 26 C. D. 294; *Re Thorne*, [1917] 1 Ch. 360.

(*x*) The words in brackets are not required having regard to sect. 22 (1) and (2) of the T. A. 1925.

(*y*) The following are alternative forms of clauses empowering the intended wife, if she should survive her husband, to make provision out of

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being a son shall attain the age of twenty-one years or die under that age leaving issue, or being a daughter shall attain that age or marry, then two equal third parts or shares of such property; and if there shall be more than one such child, but not more than

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the trust funds in favour of a future husband and the issue of a future marriage:—

Power for wife to withdraw a definite sum from the settlement on a second marriage.

(1) "PROVIDED ALWAYS, and it is hereby agreed and declared, that if the wife shall survive the husband and marry again, it shall be lawful for her by deed either in contemplation of or after such remarriage to withdraw from the settlement hereby made out of the property hereby settled or covenanted to be settled, other than the husband's fund hereinafter mentioned, a sum of not exceeding £——; PROVIDED nevertheless that no such withdrawal shall be made if there shall be more than four children of the said now intended marriage, who being sons shall attain the age of twenty-one years or die under that age leaving issue, or being daughters shall attain that age or marry under that age; PROVIDED also that this power of withdrawal shall not be exerciseable to the prejudice of any previous appointment in favour of a child or issue of the said now intended marriage."

Power for wife to include children of a second marriage in appointment under powers to children of intended marriage.

(2) "PROVIDED ALWAYS, and it is hereby agreed and declared, that if the wife shall survive the husband and shall marry again while there shall be living any child or children of her said now intended marriage, then and in such case the children or child of such second marriage of the wife shall become and be objects or an object of the power of appointment hereinbefore contained which will then be vested in the wife as the survivor of the husband and herself, and of all and singular other the trusts, powers, and provisions hereinbefore contained in favour of the child or children of the said now intended marriage in like manner to all intents and purposes as if the said child or children of such second marriage had been a child or children of the said now intended marriage, but so nevertheless as not to prejudice or affect any exercise by the husband and wife of their joint power of appointment hereinbefore contained in favour of any issue of the said now intended marriage, nor any exercise by the wife alone previously to her second marriage of the aforesaid power vested in her as such survivor as aforesaid."

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three such children, then one equal half part or share of such property; and if there shall be more than three, but not more than five such children, then one equal third part or share of such property, but no such future husband shall by virtue of any such appointment take any greater interest in such property than for his life, and the trusts, powers, and provisions in favour of the child, children, or issue of the wife by any such future husband, shall be similar to those herein declared in favour of the child, children, and issue of the now intended marriage, failing which the portion of the trust property to be appointed under this power shall remain subject to the trusts of this settlement, and so that the interest or share of property to be appointed under this power shall not be withdrawn from the trusteeship of these presents, until absolutely and indefeasibly vested in some person in possession; PROVIDED ALWAYS, that any such appointment or appointments as last aforesaid may be made by the wife under the aforesaid power enabling her in that behalf, while it shall be uncertain whether or to what extent the same shall be capable of taking effect, and if so made shall take effect according to the event.

Assignment of policy to trustees.

10. The husband, with the approbation of the wife, hereby as settlor assigns unto the said [*trustees*] ALL THAT the said policy of assurance for the sum of £—— hereinbefore more particularly described, and all moneys assured by or to become payable thereunder, TO HOLD the same in trust for the husband, his executors, administrators, and assigns, until the said marriage, and after the said marriage shall have been solemnized, upon trust that the trustees or trustee shall invest the said policy moneys as and when the same shall be received in or upon any stocks, funds, or securities hereby authorised; and shall hold the said policy and policy moneys, and the investments for the time being representing the same (hereinafter called "the husband's fund"), and the income thereof respectively, upon the trusts and with and subject to the powers and provisions herein declared and contained concerning the wife's fund (other than and except any trust or power enabling the wife to make provision for any future husband or the issue of any future marriage), or as near thereto as the deaths of parties and other circumstances will admit, save and except that if there shall be no child of the said intended marriage who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then, subject to the trusts, powers,

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and provisions herein declared and contained, or by law vested in the trustees or trustee in relation to the same premises, the trustees or trustee shall stand possessed of the said policy moneys, or so much thereof as shall not have been applied under any such trusts, powers, or provisions (*z*), and the investments and income thereof, in trust for the husband, his executors, administrators, and assigns.

Covenants by husband to keep up policy, &c.

11. The husband hereby covenants with the said [*trustees*] that if the said intended marriage shall be solemnized, he the husband will not do or suffer any act or thing whereby the said policy [policies or any of them] (*a*) or any other policy to be effected as hereinafter mentioned may become void or voidable: And that if any such policy shall become voidable, the husband will immediately, at his own cost, do all things necessary for restoring and keeping on foot the same, and if any such policy shall become void, will immediately, at his own cost, effect a new or substituted policy or policies on his life in the names or name of the trustees or trustee, in an office to be approved of by them or him, for the full amount assured by the policy so becoming void; And, further, that he the husband will regularly and punctually pay the annual premiums and all other sums of money, if any, which may become payable for keeping on foot the said original policy [policies respectively] and any new or substituted policy or policies, and will from time to time deliver to the trustees or trustee the receipt for every such payment within —— days after the same shall have become payable: And in case he shall at any time refuse, neglect or omit to pay, produce, restore, or effect any such premium, receipt, or policy within the times or manner respectively aforesaid, it shall be lawful for, but not obligatory upon the trustees or trustee to pay the premium, or to restore the policy to which any such default, refusal, neglect, or omission shall relate, or to effect any such new or substituted policy or policies as aforesaid in lieu

(*z*) If it is desired to avoid the possibility of an escheat under the A. E. A. 1925, then the trusts in default of issue should be for the husband as he shall by deed or will appoint, and in default of appointment for the next of kin under the Statutes of Distribution in force before January 1st, 1925, corresponding (*mutatis mutandis*) to the wife's trusts in clause 7 of this precedent, *ante*, p. 341, and as indicated in note (*q*), *ibid.*

(*a*) The variations in brackets throughout this clause are to be used where several policies are brought into settlement.

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thereof; And, further, that the husband, his heirs, executors, or administrators, will on demand repay to the trustees or trustee all moneys which they or he shall disburse for any of the purposes aforesaid, with interest thereon at the rate of —— per cent. per annum, until payment thereof; And will do and concur in all acts to enable them and him to effect any such new or other policy as aforesaid; And that every new policy to be effected as hereinbefore provided, and the moneys to become payable thereunder, shall be held and applied upon the trusts and with and subject to the powers and provisions hereby declared and expressed concerning the said original policy and the moneys to become payable thereunder (*b*).

Proviso that bonuses may be applied in reduction of premiums, or added to policy.

12. Provided always, that any moneys which may be from time to time received by the trustees or trustee by way of bonus in respect of the [any] policy hereby assigned, or any such substituted policy or policies as aforesaid, may (so far as the rules and regulations of the assurance office for the time being in force may permit) at the option of the husband be applied wholly or in part in reduction of the premiums upon such policy, and in default of or subject to such option, any such moneys shall be added to the said policy [policies] hereby assigned, and be held upon, with, and subject to the same trusts, powers, and provisions as are herein declared and contained of the moneys assured by the same policy [policies], and the investments for the time being representing the same.

Power for trustees to sell or surrender policy, and accumulate proceeds (*c*).

13. Provided also, that the trustees or trustee may, with the consent in writing of the wife during her life, and after her death at the absolute discretion of the trustees or trustee, if they or he shall consider it expedient so to do, sell or dispose of the policy

(*b*) As to the right of trustees to impound the husband's interest under the settlement on his failing to maintain the policy, see *Re Jewell's Settlement*, [1919] 2 Ch. 161; 88 L. J. Ch. 357.

(*c*) The husband being the settlor, the trust for accumulation will not operate beyond the life of the settlor, and therefore is not within the mischief of Thellusson's Act.

The following is an alternative form; after the power to sell or surrender the policy continue as follows:—

"And in the event of and after any such sale or disposition the trustees or trustee shall, although the husband shall then be living,

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[all or any of the policies] hereby assigned, or any such substituted policy or policies as aforesaid, either by way of surrender to the society or societies by whom the same may have been granted respectively or otherwise; AND in the event of and after any such sale or disposition the trustees or trustee shall hold the net proceeds of such sale or disposition upon trust during the then residue of the life of the husband, to accumulate the income of the same, from time to time, by way of compound interest by investing the same income and the resulting income thereof upon any of the stocks, funds, or securities hereby authorised for investment; AND from and after the death of the husband shall hold such accumulated fund and the income thereof upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained concerning the husband's fund and the income thereof.

Proviso for indemnity of trustees.

14. PROVIDED ALWAYS, and it is hereby agreed and declared, that the trustees or trustee shall not be chargeable or responsible for any omission or neglect to enforce any of the covenants hereinbefore contained in relation to the policy [respective policies] hereby assigned, or any such substituted policy or policies as aforesaid, or to see that the same respectively are kept in force or restored, or for or by reason of any policy or policies lapsing or becoming void by any means whatsoever.

Investment clauses:

A. (Restricted range.)

15. The trustees or trustee (*d*) are hereby authorised [with such consent or at such discretion as aforesaid] to invest any moneys for the time being subject to the trusts hereof and requiring or being applicable for investment hereunder in the names or under the legal control of the trustees or trustee [In or upon any stocks, funds, or securities which may be for the time being authorised by law (*e*) for the investment of trust funds, or of cash under the

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hold the net proceeds of such sale or disposition upon the trusts and with and subject to the powers and provisions hereinbefore declared concerning the moneys assured by the said policy [policies] hereby assigned, and the investments for the time being representing the same, to take effect after the death of the husband, and as if he were then actually dead."

(*d*) In the case of a will, substitute the words "my trustees" for "the trustees or trustee" throughout the investment clauses.

(*e*) Investments authorised by and in respect of issues under sects. 1—7 of the T. A. 1893; Colonial Stock Act, 1900, s. 2; Metropolis Water

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control or subject to the order of the Court [except real securities in Ireland]; but not in any stocks, funds, bonds, shares, or bearer securities, or securities transferable by mere delivery or delivery and indorsement though coming within the general description of investments hereinbefore authorised] (*f*).

B. (Comprehensive range.)

[In or upon any of the parliamentary or government stocks, funds, or securities of the United Kingdom (*g*), or India (*h*), or of any Colony (including in that expression any British Colony or Dependency, or any province or state with a separate legislature forming part of such Colony or Dependency), or of any foreign government or state, or stock of the Bank of England or the Bank of Ireland, or Metropolitan stock, or London County stock, or debenture stock or guaranteed stock of any county, municipal, or other local or public authority or body in the United Kingdom, or India, or any Colony or any foreign country, or debenture stock or preference stock, or preference shares, or ordinary stock or shares (*i*) of any railway company or other company in the United Kingdom or India (*k*), or in any Colony, or any

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Act, 1902, s. 17 (4); R. S. C., Ord. 22, r. 17; the Housing (Additional) Powers Act, 1919; and Government of Ireland Act, 1920, s. 33, are authorised by the T. A. 1925, s. 1.

(*f*) The T. A. 1925, s. 7, provides that a trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer, which, if not so payable, would have been authorised investments. Such securities must be deposited with a bank unless the trustee is a trust corporation; a direction that investments are to be retained or made in the trustee's name is not a prohibition, and the section provides that a trustee shall not be responsible for loss occurring in consequence of a deposit with the bank.

(*g*) "United Kingdom" means Great Britain and Northern Ireland: T. A. 1925, s. 68 (20). Irish Free State securities are not authorised by the T. A. 1925, and by sect. 1 (2) (b), a railway or canal company, whose system is situate partly in Northern Ireland and partly in Southern Ireland, is not included in authorised United Kingdom railway or canal stocks or securities.

(*h*) As to Indian investments, see sect. 1 (d), (e), (j), (k) of the T. A. 1925.

(*i*) See *Re Willis*, [1911] 2 Ch. 563.

(*k*) For the purposes of the T. A. 1893, amalgamated railways under the Railways Act, 1921, were treated as having paid a dividend on their ordinary stock for ten years at 3 per cent. per annum: sect. 15, re-enacted by the T. A. 1925, s. 1 (2).

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foreign country, in actual work and paying a dividend on its ordinary stock or shares, or upon the debentures, debenture stock, or preference stock or shares of any company in the United Kingdom incorporated by special Act, or by or under any public general Act or Acts of Parliament (*l*); or upon freehold, leasehold, or chattel real securities (*m*) in the United Kingdom (*n*) [including first charges registered under the Land Transfer Acts, 1875 and 1897], such leaseholds or chattels real having not less than —— years to run at the time of investment therein, or upon any securities of, or guaranteed by any government, or upon the security of any real or immovable property either together with or without any movable property, in India, or any Colony, or any foreign country, or upon the debentures, mortgages or securities of any county, municipal, local or public authority or body, or of any railway or other company in the United Kingdom or India, or any Colony, or any foreign country, or on the securities of rates or tolls made or levied by any such authority or body as aforesaid.]

C. (Fair range.)

[In or upon any of the parliamentary or government stocks, funds, or securities of the United Kingdom (*n*), or India, or of any Colony (including in that expression any British Colony or Dependency, or any province or state with a separate legislature forming part of such Colony or Dependency), or in stock of the Bank of England or Ireland, or Metropolitan stock, or London County stock, or in debenture stock of any county, municipal, or local authority in Great Britain, but not in Ireland, or in debenture stock, or preference stock, or preference shares of any railway or other company in the United Kingdom incorporated or estab-

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(*l*) This will include private companies. As to the meaning of "incorporated by Act of Parliament," see *Re Smith*, [1893] 2 Ch. 590; *Elve* v. *Boyton*, [1891] 1 Ch. 501; and of "public company," see *Re Sharp*, 45 Ch. D. 286. As to private companies (Companies (Consolidation) Act, 1908, s. 121, amended by the Companies Act, 1913), see *Park* v. *Royaltics, &c.*, [1912] 1 K. B. 330. As to the meaning of "any company in the United Kingdom," see *Re Hilton*, [1909] 2 Ch. 548.

(*m*) By sect. 5 (2) of the T. A. 1925, a trustee having power to invest in real securities may accept the security in the form of a charge by way of legal mortgage: see L. P. A. 1925, s. 87; and may in exercise of the statutory power convert an existing mortgage into a charge by way of legal mortgage.

(*n*) See note (*g*), *ante*, p. 349.

lished by charter or an Act of Parliament, in actual work and paying a dividend upon its ordinary stock or shares, or the stock or shares of any railway company in the United Kingdom or India on which a fixed or minimum rate of dividend is guaranteed by the same or any other company, or by the government of India, or any Colony, or guaranteed by means of a fixed rental payable by any other company; or upon freehold, copyhold, leasehold, or chattel real securities (*o*) in England or Wales, but not in Ireland, or in or upon any bonds or securities which, or the interest upon which, are or is guaranteed by parliament, or upon the debentures or mortgages of any railway or other company in the United Kingdom incorporated by charter or Act of Parliament, and paying a dividend as aforesaid, or upon the bonds, debentures, or securities of or issued by any such county, municipal, or local authority as aforesaid, or on the security of rates or tolls made or levied by any such authority.]

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[In or upon any of the parliamentary or government stocks, funds, or securities of the United Kingdom, or India, or in stock of the Bank of England or of the Bank of Ireland, or Metropolitan stock, or London County stock, or in or upon the debenture stock, or preference stock, or preference shares of any railway or other company in United Kingdom and Southern Ireland incorporated or established by charter or special Act of Parliament, and in actual work and which shall during the ten preceding years have paid a dividend of not less than 2 per cent. per annum on its ordinary stock or shares; or at interest upon any government securities of the United Kingdom or India, or upon freehold or long leasehold security (*o*) in England or Wales, but not in Ireland, but so that every such long leasehold security shall be on property wherein a term of not less than —— years shall be unexpired at the date of such security, or in or upon the bonds, debentures, or mortgages of any such railway or other company as aforesaid, [or in the purchase of, or at interest upon any stocks, funds, or securities which may for the time being be authorised for the investment of trust funds or of cash under the control of the Chancery Division], but not in any other mode of investment.]

D. (Another form with restricted range.)

[In or upon any stocks, funds, shares, or securities, or other investments of any nature whatsoever and whether involving

E. (Extensive range, short form.)

(*o*) See note (*m*), *ante*, p. 350.

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liability or not, or upon personal credit with or without security, and generally in such manner as the trustees or trustee shall in their or his absolute discretion think proper, To the intent that they or he shall have as full power of investing and varying investments as if they or he were absolutely entitled.]

Power to vary investments (*p*).

16. The trustees or trustee may [with such consent or at such discretion as aforesaid] vary or transpose any investments made hereunder into or for others of any nature hereby authorised (*q*).

Power to lend on second mortgages and contributory mortgages.

17. Any investment on mortgage may be made subject to any prior charges or incumbrances affecting the property mortgaged, or to any stipulation for the continuance of the loan for a term certain, or may be made jointly with any other persons or person by way of contributory mortgage (*r*) to be taken either in the joint names of the contributories, or in the names or name of any other persons or person in trust for the contributories, or otherwise, as the trustees or trustee shall think expedient.

Special indemnity (*s*);

18. In addition to the indemnity given by law to trustees the trustees or trustee shall not be answerable or accountable for lending on the security of any hereditaments with a less than marketable title (*t*).

(*p*) Where the power to vary investments is given in the trusts for investment, this clause may be omitted.

The T. A. 1925, contains new and supplementary powers for trustees investing by sect. 10. Trustees may agree not to call in money lent for seven years if interest is paid, and covenants for the maintenance and protection of property are performed as thereby provided. Under certain conditions, upon sale of freeholds or leaseholds having a term of at least 500 years, up to two-thirds of the purchase-money may remain on mortgage. The trustees may agree to the reconstruction or amalgamation of a company, or to a modification or release of rights attached to securities, and may exercise rights in regard to any offer of securities in respect of their holding. These powers are subject to the consent of any person whose consent to a charge of investment is necessary, and may be exercised so far as a contrary intention is not expressed in the instrument: sect. 69 of T. A. 1925.

(*q*) Express clauses enabling trustees to pay calls on shares or to deposit securities with a bank are not needed now: see T. A. 1925, s. 11 (2); and as to deposits, sects. 7 (1) and 21.

(*r*) See *Webb* v. *Jonas*, 39 Ch. D. 660; *Re Dive*, [1909] 1 Ch. 328.

(*s*) This is a very wide indemnity. Sect. 8 (3) of the T. A. 1925, gives a reasonable immunity.

(*t*) See Trustee Act, 1925, ss. 8 and 9.

I. OF STOCK BELONGING TO WIFE AND LIFE POLICY OF THE HUSBAND.

19. The trustees or trustee shall have full power to apportion, as they or he shall think fit, any funds subject to different trusts which may have become blended, and to determine all questions arising in the trust, and their or his decision, whether made upon a question actually raised, or implied in their or his acts, shall be conclusive and binding upon all persons interested hereunder.

power for trustees to apportion blended trust funds and settle questions, &c. (*u*).

20. The statutory power of appointing a new trustee or new trustees of these presents shall be vested in the husband and wife during their joint lives and the survivor of them during his or her life; [AND it is hereby agreed that the person or persons in whom for the time being such power is vested may from time to time increase the number of the trustees, notwithstanding that no case for the appointment of a new trustee has arisen, and may appoint any person or persons, or a corporation, or a trust corporation (*z*) to be a trustee or trustees jointly with the continuing trustees, or may appoint as custodian trustee a trust corporation].

power to appoint new trustees (*x*); and to appoint additional trustee and/or a corporation or Public Trustee (*y*).

21. IT IS HEREBY AGREED that any trustee of these presents being a solicitor or other person engaged in any profession or business may be employed or act in or about the execution of the trusts of these presents, and being so employed or acting shall be

Power to trustees to employ agents and to charge for professional business (*a*).

(*u*) See sect. 15 of the T. A. 1925, which re-enacts sect. 21 of the T. A. 1893, with extensions enabling two or more trustees or a sole trustee, if authorised by the instrument or by statute, to (a) accept any property, real or personal, before the time at which it is made transferable or payable; and (b) sever and apportion any trust funds or property.

(*x*) See the T. A. 1925, ss. 34 to 43 (inclusive).

(*y*) By sect. 36 (6) of the T. A. 1925, where a sole trustee other than a trust corporation is or has been originally appointed to act, or if there are not more than three trustees (none of them being a trust corporation) the number of trustees may be increased, but not beyond four, in manner provided by the section. As to appointing the Public Trustee as sole trustee, or jointly with others, or as custodian trustee, see Public Trustee Act, 1906, and see *ante*, Vol. I. p. 78. As to appointing a corporation as trustee jointly with an individual, see Bodies Corporate (Joint Tenancy) Act, 1899; *Re Thompson*, [1905] 1 Ch. 229; and as to the effect of the appointment of a trust corporation as a sole trustee in regard to receipts, see, *inter alia*, T. A. 1925, ss. 14 and 15.

(*z*) See sect. 68 (18) of the T. A. 1925, for the meaning of trust corporation.

(*a*) Sect. 23 of the T. A. 1925, gives wide powers of delegation in addition to the provisions (which are re-enacted) of sect. 179 of the

I. OF STOCK BELONGING TO WIFE AND LIFE POLICY OF THE HUSBAND.

entitled to and be paid all usual or proper professional or other charges for any business or act done by him or his firm in the premises, whether in the ordinary course of his profession or business or not, and although not of a nature requiring the employment of a solicitor or other professional person (*b*).

IN WITNESS, &c.

II. SETTLEMENT *on* MARRIAGE, *of* STOCKS, SHARES, BONDS *and* SECURITIES *belonging to the intended* HUSBAND: USUAL TRUSTS *for* HUSBAND *for* LIFE, *for* WIFE *surviving for her* LIFE, *and in favour of the* ISSUE *of the* MARRIAGE. ULTIMATE TRUST *for* HUSBAND.

Parties.

THIS SETTLEMENT (*c*), made the —— day of ——, 19—, BETWEEN [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part.

Recitals: of intended marriage;

WHEREAS a marriage is intended shortly to be solemnized between the husband and wife.

of agreement to settle stocks, &c.

AND WHEREAS, pursuant to an agreement made upon the treaty for the said marriage, the several stocks, shares, bonds, and securities respectively mentioned in the schedule hereto which belong to the husband have been transferred into the names of and delivered to the said [*trustees*], to be held by them in trust for the husband until the said marriage, and thereafter upon the trusts and with and subject to the powers and provisions hereinafter declared and contained.

Testatum.

NOW THIS DEED WITNESSETH that, in pursuance of

T. A. 1893, but if it is desired that any of the trustees are to be employed and paid this clause should be inserted, as the Act does not enable trustees to appoint one of themselves as their agent for remuneration.

(*b*) As to the right of a co-trustee to tax the costs of a solicitor co-trustee, see *R. H. P. Davies & Son*, [1917] 1 Ch. 216.

(*c*) Stamp, 5*s*. per 100*l*. or part of 100*l*. of the value of the shares, bonds, and securities at the date of the settlement: see Stamp Act, 1891, 1st sched. *sub tit.* Settlement; but the stamp should be adjudicated.

such agreement, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

II. OF STOCKS, SHARES AND BONDS BELONGING TO HUSBAND.

Declaration of trusts of shares and bonds, &c., specified in schedule:

1. The said [*trustees*], their executors, administrators, and assigns, shall after the intended marriage stand possessed of the said stocks, shares, bonds, and securities specified in the schedule hereto [which said stocks, shares, bonds, and securities are according to the average price of the same respectively on the day of the date hereof of the values set opposite thereto respectively in the same schedule, amounting in the whole to the cash value of £—— (*d*)], upon trust that the said [*trustees*], or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall either allow the said stocks, shares, bonds, and securities, or any of them, or any part thereof respectively to remain in their present state of investment respectively, or shall upon the request in writing [*or*, may with the consent] of the husband and wife during their joint lives, and of the survivor during his or her life, and after the death of such survivor at the discretion of the said trustees or trustee, sell or dispose of the same trust premises, or any of them, or any part thereof respectively, and lay out and invest the moneys to arise therefrom in their or his names or name, or under their or his legal control, in or upon any of the stocks, funds, shares, and securities hereinafter authorised for the investment of trust moneys, and may from time to time, with such consent, or at such discretion as aforesaid, vary or transpose any of the said investments into or for others of any nature hereby authorised.

for husband till marriage; and afterwards to retain present investments or sell and invest proceeds.

Trusts of income for husband for life, and for wife if surviving for life.

2. The trustees or trustee shall pay the income of the said stocks, funds, shares, and securities hereby settled, and of the investments for the time being representing the same respectively (hereinafter called "the settled fund"), unto the husband and his assigns during his life, and from and after his death shall pay the income of the settled fund to the wife, if she shall survive him during her life, but so that during the coverture she shall not have power to anticipate such reversionary life interest.

Remainder for issue as

3. From and after the death of the survivor of them, the hus-

(*d*) It may be convenient to state these particulars in the schedule.

II. OF STOCKS, SHARES AND BONDS BELONGING TO HUSBAND.

husband and wife shall appoint (*short form*) (*e*);

remainder as survivor shall appoint;

trusts in default of appointment, &c.

band and wife, the said trustees or trustee shall stand possessed of the settled fund and the income thereof, in trust for all or any of the children or remoter issue of the said intended marriage in such shares, and generally in such manner as the husband and wife shall by any deed or deeds, revocable or irrevocable, jointly appoint: AND in default of and subject to any such appointment then as the survivor of them the husband and wife shall in like manner or by will or codicil appoint; AND in default of and subject to any appointment under the respective powers hereinbefore contained: In trust for all the children or any the child of the said intended marriage, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry [with the consent of her parents or parent or guardians or guardian], and if more than one in equal shares.

4. [*Hotchpot clause, see Precedent I., clause* 5, *p.* 339 (*f*).]

Ultimate trust for husband in default of issue.

5. If there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry [with such consent as aforesaid], then, subject to the trusts and powers hereinbefore declared and contained, or by law vested in the trustees or trustee, the trustees or trustee shall stand possessed of the settled fund and the income thereof, or so much thereof as shall not have become vested or been applied under any of such trusts or powers, In trust for the husband absolutely (*g*).

(*e*) Or the full form, clause 4 of Precedent I., *ante*, p. 338, may be used.

(*f*) As to advancement, see *ante*, p. 340, note (*o*).

(*g*) Sometimes a proviso to the following effect is here inserted:—

Proviso giving widow, in default of issue, only one moiety of income of the trust fund.

"PROVIDED nevertheless that, if there shall be no such child of the said intended marriage as aforesaid, and the wife shall survive the husband, then the trustees or trustee shall, upon the failure or in default of such issue, set apart and appropriate one moiety of the said trust fund, and pay the income thereof to the wife during her life in manner aforesaid, and shall hold the other moiety of the said trust fund, and also the first mentioned moiety thereof, subject to such life interest therein of the wife as aforesaid

II. OF STOCKS, SHARES AND BONDS BELONGING TO HUSBAND.

6. If the husband shall at any time or times be desirous of withdrawing from the settlement hereby intended to be created, all or any of the said stocks, shares, bonds, and securities specified in the said schedule hereto, or the stocks, funds, shares, or securities by which the same shall under or by virtue of the trusts or powers of investments and varying investments hereinbefore contained respectively, or of this provision be represented, or any part or parts thereof respectively, he shall be at liberty so to do, substituting from time to time to the satisfaction of the trustees or trustee other stocks, funds, shares, or securities which in the estimation of the trustees or trustee shall be of equivalent value.

Proviso that settlor may withdraw securities from settlement, substituting others (*h*).

7. [*Investment clause, see Precedent I., clause* 15, *p.* 348.]

8. [*Power to invest on contributory mortgage, clause* 17, *p.* 352.]

9—12. [*Trustee clauses, clauses* 18 *to* 21, *pp.* 352 *and* 353.]

IN WITNESS, &c.

THE SCHEDULE HEREINBEFORE REFERRED TO.

III. SETTLEMENT *on* MARRIAGE *of a* POLICY *of* INSURANCE *effected on the* LIFE *of the* INTENDED HUSBAND *in his own* NAME *for the* BENEFIT *of the* INTENDED WIFE *and the* ISSUE *of the* MARRIAGE.

THIS SETTLEMENT (*i*), made the —— day of ——, BETWEEN [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part: WHEREAS [*recite intended marriage,* ante, *p.* 336].

Parties.

Recitals:

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in trust for the executors or administrators of the said husband as part of his personal estate."

And see note (*q*), *ante,* p. 341, if it is desired to extend the circle of beneficiaries under the ultimate trusts beyond the limits imposed by A. E. A. 1925.

(*h*) This proviso will not, of course, be inserted in the absence of special instructions.

(*i*) Stamp, 5*s.* per 100*l.* or part of 100*l.* on the sum assured by the policy: see *ante,* p. 354, note (*c*). The stamp must be adjudicated.

III. OF POLICY ON LIFE OF HUSBAND.

of title to policy, and agreement for settlement thereof.

AND WHEREAS the husband is absolutely entitled to a policy of assurance effected by him on his own life and in his own name for the sum of £——, with the —— Life Assurance Society, dated the —— day of ——, and numbered ——, and under the annual premium of £——, and upon the treaty for the said marriage it was agreed that the same policy should be assigned to the said [*trustees*] in manner hereinafter appearing upon the trusts and with and subject to the powers and provisions hereinafter contained of and concerning the same.

Testatum.

NOW THIS DEED WITNESSETH, in pursuance of the said agreement, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

Assignment of policy to trustees (*k*).

1. The husband, with the approbation (hereby certified) of the wife, hereby as settlor assigns unto the said [*trustees*], ALL the said policy of assurance on the life of the husband in the said —— Life Assurance Society, to which he is so entitled as aforesaid, and the said sum of £—— thereby assured, and all moneys to be recovered or received under or by virtue of the said policy by way of bonus or otherwise, TO HOLD the same unto the said [*trustees*], upon trust for the husband until the solemnization of the said intended marriage and thereafter upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same.

Habendum.

In trust for husband till marriage, and afterwards on trusts declared.

Declaration of trusts of policy moneys:

trust for investment:

and power to vary;

2. If the said intended marriage shall be solemnized, the said trustees, or other trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall, upon the death of the husband, receive all the moneys assured by or to become payable under or by virtue of the said policy; and shall with the consent in writing of the wife during her life, and, after her death, at the discretion of the trustees or trustee, invest the same in the name or names or under the legal control of the trustees or trustee, in or upon any of the stocks, funds, shares, and securities hereinafter authorised, and may from time to time, with such consent, or at such discretion as aforesaid, transpose any investments into others of any nature hereby authorised.

trust for income for wife for life

3. The trustees or trustee shall pay the income of the said policy moneys, and of the investments for the time being repre-

(*k*) Notice of this assignment should be given to the society.

senting the same (which moneys and investments are hereinafter called "the trust fund"), unto the wife during her life, but so that she shall not, during coverture, have power to anticipate such reversionary life interest.

without power of anticipation;

4. From and after the death of the wife the trustees or trustee shall stand possessed of the trust fund and the income thereof in trust, &c. [*for issue of marriage as husband and wife shall jointly appoint; remainder as survivor shall appoint, and in default of appointment for children equally at twenty-one or marriage, Precedent I., clause* 4, *p.* 338; *or Precedent II., clause* 3, *p.* 355.]

trusts for issue.

5. [*Hotchpot clause, Precedent I., clause* 5, *p.* 339 (*l*).]

6. [*Ultimate trust in default for husband absolutely, Precedent II., clause* 5, *p.* 339; *and see note* (*q*), ante, *p.* 341.]

7. [*Covenant by husband to keep up policy, Precedent I., clause* 11, *p.* 346.]

8. [*Proviso as to bonus being used for reduction of premiums, Precedent I., clause* 12, *p.* 347.]

9. [*Power to trustees to sell or surrender policy and accumulate proceeds, Precedent I., clause* 13, *p.* 347.]

10. [*Proviso for indemnity of trustees, Precedent I., clause* 14, *p.* 348.]

11—15. [*Investment clauses, Precedent I., clauses* 15, 17, *and* 18, ante, *pp.* 348 et seq.]

16. [*Appointment of new trustees, Precedent I., clause* 20, *p.* 353.]

17. [*Power to employ agents and solicitor-trustee clause, Precedent I., clause* 21, *p.* 353.]

IN WITNESS, &c.

(*l*) As to maintenance and advancement, see p. 339, note (*n*), and p. 340, note (*o*).

IV. OF SUM SECURED BY COVENANT.

IV. SETTLEMENT *on* MARRIAGE *of a* SUM *of* MONEY *secured by the* COVENANT *of the* LADY'S FATHER, *payable within a year after his* DEATH, *with* INTEREST *in the meantime.* TRUST *of* INCOME *for* WIFE *for her* LIFE. POWER *to the* WIFE *to* BEQUEATH *a* LIFE INTEREST *to any* HUSBAND. TRUSTS *after* DEATH *of* WIFE *in favour of her* CHILDREN *by any* MARRIAGE *as she shall* APPOINT; *and in default of* APPOINTMENT *for such* CHILDREN *in* EQUAL SHARES.

Parties.

THIS SETTLEMENT (*m*), made the —— day of ——, BETWEEN [*father*], of, &c., of the first part; [*intended wife*], spinster, daughter of the said [*father*] (hereinafter called "the wife"), of the second part; [*intended husband*], of, &c. (hereinafter called "the husband"), of the third part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the fourth part.

Recitals: of intended marriage;

WHEREAS a marriage is intended shortly to be solemnized between the husband and wife.

of agreement to settle.

AND WHEREAS in contemplation of such marriage the said [*father*] has agreed to settle, within twelve months after his decease, the sum of £—— upon his said daughter.

Testatum.

NOW THIS DEED WITNESSETH that, in consideration of the said intended marriage, and of the premises, it is hereby agreed and declared as follows:—

Covenant by father to pay money, *post obit;*

1. The said [*father*] hereby covenants with the said [*trustees*], that, if the said marriage be solemnized, the executors or administrators of the said [*father*] shall, within twelve calendar months after his decease, pay unto the said [*trustees*], or other the trustees or trustee for the time being under these presents (hereinafter called "the trustees or trustee"), the sum of £——; AND that the said [*father*], his executors or administrators, will, on every —— day of —— and —— day of —— after such marriage, until the said principal sum shall be paid, pay to the trustees or trustee interest after the rate of 4 per cent. per annum, from the day of such marriage, on the said principal sum of £——, and a proportional part of such interest from the last of such days to the day of payment of the said principal sum.

and interest in the meantime.

(*m*) Stamp, 5*s.* per 100*l.* or part of 100*l.* on the sum secured by the covenant.

IV. OF SUM SECURED BY COVENANT.

2. PROVIDED ALWAYS, that the said [*father*] shall be at liberty to pay the said sum of £——, or any part thereof, to the trustees or trustee at any time or times in his lifetime (*n*).

Investment. Power to vary investments.

3. The trustees or trustee shall upon receipt of the said principal sum, or any part thereof, with the consent in writing of the wife, or, after her decease, at their or his discretion, invest the same in their or his names or name, in or upon any of the stocks, shares, funds, or securities hereby authorised, and may from time to time with such consent or at such discretion as aforesaid transpose any of such investments into others of any nature hereby authorised.

Income to wife without power of anticipation. Power to bequeath life interest to husband; to appoint capital to children. Trusts in default of appointment.

4. The trustees or trustee shall pay the interest to be received by virtue of the foregoing covenant, and other the income from the said trust premises, to the wife during her life, but without power of anticipation during any coverture; AND, after her decease, shall, if she should by will so direct, pay all or any part of the income from the trust premises unto any her surviving husband, during his life, or for any shorter period; AND, subject thereto, shall transfer the said trust premises unto such child or children or other issue of the wife, whether by her now intended or any future husband, and in such proportions and manner as she shall by deed or will appoint; AND, subject thereto, shall transfer the said trust premises unto such child or children of the wife as shall attain the age of twenty-one, or marry under that age, if more than one, in equal shares; AND, if there be no such child, shall hold the unappointed and unapplied trust premises in trust for the said [*father*], his executors, administrators and assigns (*nn*).

5. [*Hotchpot clause, Precedent I., clause* 5, *p.* 339 (*o*).]

6. [*Investment clauses, Precedent I., clause* 15, *pp.* 348 et seq.]

(*n*) See T. A. 1925, s. 15 (a), enabling trustees to accept any property before the time at which it is made payable or transferable to them.

(*nn*) For an ultimate trust in favour of the father's next of kin under the law in force prior to the A. E. A. 1925, see precedent in note (*c*), p. 407, *post*, substituting the words "the said [*father*]" for "husband."

(*o*) As to maintenance and advancement, see *ante*, pp. 339 and 340, notes (*n*) and (*o*).

IV. OF SUM SECURED BY COVENANT.

7. [*Appointment of new trustees, Precedent I., clause* 20, *p.* 353.]

8. [*Solicitor-trustee clause, Precedent I., clause* 21, *p.* 353.]

IN WITNESS, &c.

V. SETTLEMENT *on* MARRIAGE *of a* GROSS SUM COVENANTED *by the* HUSBAND *to be* PAID *by him on the* MARRIAGE, *and of a* REVERSIONARY INTEREST *of the* WIFE *derived under the* MARRIAGE SETTLEMENT *of her* PARENTS, *and on* APPOINTMENT. PROVISO *that the* SUM *secured by* HUSBAND'S COVENANT *shall not be* CALLED *in during his* LIFETIME. COVENANTS *by* WIFE'S FATHER *to* PAY *an* ANNUITY, *during* JOINT LIVES *of* HIMSELF *and his* WIFE, *and to make up* WIFE'S REVERSIONARY INTEREST *to a certain* AMOUNT. POWER *to* INVEST TRUST MONEYS *in* PURCHASE *of* LAND; POWER *to* APPORTION *blended* FUNDS; POWER *for* SURVIVING HUSBAND *or* WIFE *to withdraw* TRUST FUNDS *from* SETTLEMENT *on a* FUTURE MARRIAGE; POWER *for* HUSBAND *and* WIFE *respectively to* APPOINT *his and her own* TRUSTEES.

Parties.

THIS SETTLEMENT (*p*), made the —— day of ——, 19—, BETWEEN [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; [*wife's father*], of, &c., of the third part; and [*trustee No.* 1], of, &c., [*trustee No.* 2], of, &c., [*trustee No.* 3], of, &c., and [*trustee No.* 4], of, &c., of the fourth part.

Recitals: of intended marriage;

WHEREAS a marriage is intended shortly to be solemnized between the husband and wife.

(*p*) Stamp, 5*s.* per 100*l.* or part of 100*l.* of the amount of the sum covenanted to be paid by the husband, and of the value of the wife's reversionary interest (see *Onslow* v. *I. R. Commrs.*, [1891] 1 Q. B. 239); also 2*s.* 6*d.* for every 5*l.* and for any fractional part of 5*l.* of the annuity (see Stamp Act, 1891, sched. *tit.* Bond, &c.), 10*s.* in respect of the covenant to make up the value of the reversionary interest, and 10*s.* in respect of the covenant to settle the wife's after-acquired property, if inserted. The stamps should be adjudicated.

V. OF SUM SECURED BY HUSBAND'S COVENANT, AND REVERSIONARY INTEREST OF WIFE UNDER PRIOR SETTLEMENT, &C.

AND WHEREAS upon the treaty for the said marriage it was agreed that the husband should enter into the covenant on his part hereinafter contained for payment to the said [*trustees*] of the sum of £——, in manner hereinafter appearing, to be settled upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

of agreement that husband shall covenant for payment of sum;

AND WHEREAS under an indenture dated, &c., and made between [*parties*] (being the settlement made on the marriage of the said [*wife's father*] and [*wife's mother*]), and a deed poll dated, &c., under the hands and seals of the said [*wife's father*] and [*wife's mother*], the wife is entitled to one equal ——th part or share of or in the trust funds and property subject to the trusts of the said settlement, subject to the prior life interests of the said [*wife's father*] and [*wife's mother*] in the said trust funds and property under the same settlement; AND upon the treaty for the said marriage it was agreed that the said part or share of the wife, and all other her share or interest under or by virtue of the said settlement and appointment, or either of them, should be assigned to the said [*trustees*] to be held, as and when the same shall fall into possession, upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

of wife's title to reversionary interest and of agreement to settle the same;

of agreement that wife's father should enter into covenants for payment of annuity, &c.;

AND WHEREAS upon the treaty for the said intended marriage it was further agreed that the said [*wife's father*] should enter into the covenant on his part hereinafter contained for payment to the said [*trustees*] of the annual sum hereinafter mentioned, to be received and applied upon the trusts and in manner hereinafter appearing, and also into the covenant hereinafter contained for making up the said reversionary share or interest of the wife to the sum of £——.

of agreement to settle wife's after-acquired property.

AND WHEREAS, &c. [*agreement for settlement of wife's after-acquired property,* ante, *p.* 336.]

NOW THIS DEED WITNESSETH that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

Covenant by husband for payment of gross sum with interest.

1. The husband, with the approbation of the wife, hereby covenants with the said [*trustees*] that if the said intended marriage shall take place, he the husband, his executors or administrators, will, within —— calendar months thereafter,

v. of sum secured by husband's covenant, and reversionary interest of wife under prior settlement, &c.

pay to the said [*trustees*], or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), the sum of £——, with interest for the same at the rate of —— per cent. per annum from the day of such marriage; And also, if the said sum of £——, or any part thereof, shall not be paid within such — — calendar months, will pay to the trustees or trustee interest for the same, or so much thereof as shall for the time being remain unpaid, at the rate aforesaid by equal half-yearly payments, the first of such payments to be made at the end of six calendar months from the day of the said marriage.

Proviso that trustees may forbear to compel payment of sum.

Provided always, that during the life of the husband the trustees or trustee shall not compel or require performance of the said covenant for payment of the said sum of £——, but it shall be optional for the husband to pay the same sum or any part thereof at such time or times as he shall in his discretion think fit; and that after the death of the husband it shall be lawful for the trustees or trustee in their absolute discretion either to call in and require payment of the said sum of £——, or of so much thereof as shall for the time being remain unpaid, or to leave the same on the security of the covenant for payment thereof hereinbefore contained, or on such other security as may be arranged between the trustees or trustee and the executors or administrators of the husband, for so long as the trustees or trustee shall think proper; And the trustees or trustee shall not be responsible for any loss occasioned by their omission to call in or compel or require payment of the said sum of £——, or any part thereof, either during the life of the husband or after his death.

Agreement that sum covenanted to be paid by husband shall be held on trusts to be declared.

2. The trustees or trustee shall stand possessed of the said sum of £——, hereinbefore covenanted to be paid to them (hereinafter called "the husband's fund"), and every part thereof, as and when the same shall be received by them or him, and the income thereof: Upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Assignment by wife of her reversionary interest (*q*).

3. The wife, with the approbation of the husband, hereby as settlor assigns unto the said [*trustees*]: All that the said equal

(*q*) Notice of this assignment should be given to the trustees of the original settlement: see L. P. A. 1925, s. 137.

part or share to which the wife is, and all other, if any, the share or interest to which she may in any event become entitled, under or by virtue of the said indenture of settlement and deed of appointment, or either of them, of or in the trust funds and property comprised in, or which now or at any future time may become subject to the trusts of the said indenture of settlement, expectant on the decease of the said [*wife's father*] and [*wife's mother*], and subject to their respective life interests therein as hereinbefore mentioned: To HOLD the premises hereby assigned (hereinafter called "the wife's fund") unto the said [*trustees*]. In trust for the wife until the said intended marriage shall take place, and thereafter upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same.

v. of sum secured by husband's covenant, and reversionary interest of wife under prior settlement, &c.

Habendum.

On trusts hereinafter declared.

4. The trustees or trustee shall, from and after the said intended marriage, stand possessed of the husband's fund and wife's fund respectively, as and when the same, or any part thereof respectively, shall be paid to them or him, or have fallen into possession, and either permit the same to remain in their actual state of investment, or shall, with the consent in writing of the husband and wife, during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor, at the discretion of the trustees or trustee, invest the said trust funds respectively, or such part or parts thereof respectively as shall from time to time be received by them or him in their or his names in or upon any of the stocks, shares, funds, and securities hereby authorised, and may from time to time, with such consent or at such discretion as aforesaid, transpose any of such investments into others of any nature hereinafter authorised.

Declaration of trusts, &c. of both funds:

for investment, with power to vary;

5. During the joint lives of the husband and wife the trustees or trustee shall pay the income arising from the husband's fund, or of so much as shall for the time being have been received by the trustees or trustee, and the investments representing the same, unto the husband and his assigns; and from and after the death of either of them, the husband and wife, unto the survivor of them during his or her life; AND shall, during the joint lives of the husband and wife, pay the income arising from the wife's fund, when and so soon as the same shall have fallen into possession, unto the wife; and after the death of either of them, the

as to income of husband's trust fund, during joint lives of himself and wife, to him, remainder to survivor for life;

as to income of wife's trust fund, during joint lives, to her,

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wife and husband, unto the survivor of them, and his or her assigns, during his or her life.

6. From and after the death of the survivor of them, the husband and wife, the trustees or trustee shall stand possessed of both the husband's fund and wife's fund, if and so soon as the same respectively, or any part thereof respectively, shall have been paid or fallen into possession respectively, and the income of the same funds respectively, upon trust, &c. [*for issue as husband and wife shall jointly appoint, and in default of such appointment as survivor shall appoint, and in default of any appointment for children equally at twenty-one or marriage,* ante, *Precedent I., clause* 4, *p.* 338].

remainder to survivor for life; after death of survivor both trust funds for issue of marriage.

7. [*Hotchpot clause,* ibid., *clause* 5, *p.* 339 (*r*).]

Trusts of capital in default of issue.

8. If there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, subject to the trusts and powers hereinbefore declared and contained, or by law vested in the trustees or trustee, they or he, the trustees or trustee, shall stand possessed of the husband's fund and wife's fund respectively if and so soon as the same shall have been paid or fallen into possession, and the investments representing the same, and the income thereof, or so much thereof as shall not have been paid or applied under any of such trusts or powers as to the husband's fund and the investments representing the same, and the income thereof, in trust for the husband absolutely (*s*); AND as to the wife's fund, in trust for such person or persons, and for such purposes as the wife shall during coverture by will or codicil, or when not under coverture by any deed or deeds with or without power of revocation and new appointment, or by will or codicil appoint; AND in default of such appointment, and so far as no such appointment shall extend, upon the trusts following, that is to say, if the wife shall survive the husband, then in trust for the wife absolutely (*t*), but if the husband shall survive the wife, then in trust

As to husband's trust fund, for him absolutely.

As to wife's trust fund, on usual trusts in her favour.

(*r*) As to maintenance and advancement, see *ante*, pp. 339 and 340, notes (*n*) and (*o*).

(*s*) See note (*c*), *post*, p. 407, as to widening the range of the husband's next of kin under the ultimate trusts.

(*t*) See note (*q*), *ante*, p. 341, as to widening the range of the wife's next of kin under the ultimate trusts of the wife's fortune.

for such person or persons as would have become entitled thereto(*u*) [under the statutes for the distribution of the effects of intestates had she died possessed thereof intestate and without ever having been married, such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes]: PROVIDED ALWAYS, that the wife shall not have power during the said intended coverture to dispose of or charge any estate or interest whatever, whether in possession, reversion, remainder, or expectancy, hereby given to her in any trust property hereby settled or agreed to be settled by way of anticipation.

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General proviso in restraint of anticipation.

9—14. [*Investment clauses*, ante, *Precedent I., clauses* 15, 16, 17, *and* 18, *pp.* 348 et seq.]

15. It shall be lawful for the trustees or trustee, with such consents or at such discretion as aforesaid, at any time or times to invest any trust moneys in the purchase of any freehold or leasehold messuages, lands, tenements, or hereditaments in Great Britain, but not in Ireland (so that the leaseholds be held for an absolute term, of which not less than [*sixty*] years shall be then unexpired, or by lease containing a covenant to renew for such term at least), with power to purchase, subject to any special stipulations, and to complete or accept any contract or title, though not strictly enforceable or marketable, and to waive any objections or requisitions [*or*, in any investments authorised to a tenant for life or statutory owner under sect. 73 of the Settled Land Act, 1925, with all the powers conferred by the Law of Property Act, 1925, on trustees for sale, and subject to the

Power to lay out trust moneys in purchase of land (*x*).

(*u*) See note (*t*), *supra*.

(*x*) The L. P. A. 1925, ss. 23 to 33, fully provides for the powers and duties of trustees holding land on trust for sale; and see sect. 32 of the L. P. A. 1925, under which all land purchased under a power contained in a settlement of personalty or of land upon trust for sale, to invest in land, is held by the trustees upon a trust for sale, with consequential directions as to the application of rents and profits until sale.

Sect. 28 of the L. P. A. 1925, confers on trustees for sale, in relation to land or manorial incidents and to the proceeds of sale, all the powers of a tenant for life and the trustees of a settlement under the S. L. A. 1925, including the powers of management conferred by that Act during a minority: see S. L. A. 1925, s. 102. Consequently the clauses setting out the trusts for sale and powers incidental thereto, and indemnities to trustees in connection therewith, are unnecessary.

v. of sum secured by husband's covenant, and reversionary interest of wife under prior settlement, &c.

provisions of the same Act concerning dispositions on trust for sale (*y*)].

16. If any messuages, lands, or property to be purchased as aforesaid shall be held under any lease or leases, the trustees or trustee shall be entitled to be fully indemnified out of the trust premises for the time being subject to the trusts of these presents, and the rents and income thereof from all liability in respect of all rents, covenants, and conditions reserved by or contained in such lease or leases.

Proviso for indemnity of trustees in respect of leaseholds.

Covenant by wife's father for payment of annuity.

17. The said [*wife's father*] hereby covenants with the said trustees that if the said intended marriage shall take place, he, the said [*wife's father*], his executors or administrators, will pay to the trustees or trustee during the joint lives of the said [*wife's father*] and [*wife's mother*], and the life of the survivor, if and so long as the husband or the wife, or any issue of the marriage, shall be living, the yearly sum of £——, commencing from the day of the said marriage and payable by equal half-yearly payments on the —— day of ——, and —— day of —— in every year, but to be deemed as accruing from day to day.

Trusts of annuity.

18. The trustees or trustee shall stand possessed of the said yearly sum of £——, payable under the covenant of the said [*wife's father*] upon trust from time to time (*z*) to pay and apply the same to the person or persons for the purposes and in manner for and in which the income of the wife's fund would, if the same had fallen into possession under or by virtue of the trusts, powers, and provisions herein contained, be for the time being payable or applicable.

Covenant by wife's father to make up the wife's reversionary interest to a certain amount.

19. The said [*wife's father*] hereby further covenants with the trustees that, if the said intended marriage shall take place, and if at the death of the survivor of him, the said [*wife's father*] and [*wife's mother*], his wife, the part or share appointed to or in favour of the wife, or to which she may become entitled in default of appointment, of or in the said trust funds and property com-

(*y*) Under a power to invest in the purchase of hereditaments in fee simple in possession, trustees may purchase freehold ground rents: *Re Peyton's Settlement Trusts*, L. R. 7 Eq. 463; 38 L. J. Ch. 477.

(*z*) Or, if so intended, insert here—

"pay the same to the husband during his life, and subject thereto pay and apply the same," &c., *as in the text*.

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prised in or subject to the trusts of the hereinbefore mentioned indenture of settlement, shall not be of the value in the whole of £——, then the executors or administrators of the said [*wife's father*] shall, within —— calendar months of the death of the survivor of the said [*wife's father*] and [*wife's mother*] pay to the trustees or trustee such a sum of money as shall, with the amount in value at the time of payment of the said part or share, make up the full sum of £—— with interest for the same from the death of such survivor at the rate of —— per cent. per annum.

Trusts of sum so to be paid.

20. The trustees or trustee shall hold and apply any principal sum and interest payable under the covenant lastly hereinbefore contained upon the like trusts and with and subject to the like powers and provisions as are herein declared and contained concerning the wife's fund, and the investments thereof, and the income thereof respectively.

21. [*Covenant for settlement of wife's after-acquired property, Precedent I., clause* 8, ante, *p.* 342.]

Power for trustees to raise out of the wife's trust fund a sum not exceeding £—— for her benefit.

22. Notwithstanding the proviso against anticipation by the wife of any interest hereby given to her, it shall be lawful for the trustees or trustee if they or he shall, in their or his discretion, think it proper or expedient in the interests of the wife so to do, at any time or times, upon the request in writing of the wife during her life or pursuant to her request contained in her will or any codicil thereto, and whether or not there may be issue living of the said intended marriage at the time of any such request to raise, by sale or conversion of any of the investments for the time being representing the wife's fund when and so soon as the same shall have fallen into possession, or previously thereto, by mortgage of, or charge upon the same fund, and of the said annuity and sum respectively covenanted to be paid by the said [*wife's father*], and hereby made subject to the trusts, powers and provisions of the same fund, or any of such trust premises or any part thereof respectively, at interest after such rate as may be arranged, or by such other ways and means as the trustees or trustee shall think fit, any sum or sums of money not exceeding in the whole the sum of £——, and to pay the sum so raised to the wife for her absolute use and benefit, or apply the same for her benefit in such manner as the trustees or trustee shall think fit.

v. of sum secured by husband's covenant, and reversionary interest of wife under prior settlement, &c.

23. It shall be lawful for the trustees or trustee, upon any partial or upon the final distribution of the said trust funds or any of them, to appropriate any sums of money, stocks, funds, shares, or securities, or other property for the time being subject to the trusts of these presents as the trustees or trustee shall in their or his absolute and uncontrolled discretion think proper for that purpose to answer any shares or interests, or share or interest arising under or by virtue of these presents; and every such apportionment, division, or appropriation shall be effectual and binding upon all persons interested.

Power for trustees to apportion blended trust funds, and to make appropriations (*a*).

Power for surviving husband or wife to withdraw funds from settlement on a future marriage.

24. It shall be lawful for the survivor of them, the husband and wife, at any time or times after the death of the other of them, either in contemplation of or after any future marriage of such survivor, by any deed or deeds with or without power of revocation and new appointment, or by will or codicil to appoint in favour of any after-taken wife or husband, and the child or children of such future marriage, or any of them, such shares and interests of and in the respective trust funds and property hereby settled on the part of such survivor, including in the case of the wife such shares and interests of and in any property which may become subject to the trusts of these presents under or by virtue of the agreement for settlement of her other or after-acquired property hereinbefore contained, as follows, that is to say, &c. [*continue power to withdraw funds from settlement in proportion to number of children of the intended marriage, &c.*, ut ante, *Precedent I., clause* 9, *p.* 343, mutatis mutandis].

25—30. [*Investment clauses, Precedent I., clauses* 15 *to* 17, *pp.* 348 et seq.]

31. [*Special indemnity, Precedent I., clause* 18, *p.* 352.]

Power to appoint new trustees where each party names his and her own trustee.

32. The statutory power of appointing new trustees or a new trustee of these presents in the place of the said [*trustee No.* 1] and [*trustee No.* 2], or either of them, or any future trustees or trustee to be appointed in succession to them, or either of them, shall be vested in and exercisable by the husband during his life; and the statutory power of appointing new trustees or a new trustee in the place of [*trustee No.* 3] and [*trustee No.* 4], or

(*a*) See sect. 15 of the T. A. 1925.

either of them, or any future trustees or trustee to be appointed in succession to them, or either of them, shall be vested in and exerciseable by the wife during her life.

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33. [*Power to employ trustee agents, &c., Precedent I., clause* 21, *p.* 353.]

IN WITNESS, &c.

VI. SETTLEMENT *on* MARRIAGE *of a* SHARE *of the* RESIDUARY ESTATE *of a* DECEASED TESTATOR *belonging to the* WIFE. COVENANT *by the* HUSBAND'S FATHER *for* PAYMENT *to the* TRUSTEES SIX MONTHS *after the* MARRIAGE *of a* SUM *of* MONEY *with* INTEREST *till* PAYMENT. POWER *for* TRUSTEES *to* FORBEAR *requiring* PAYMENT. COVENANT *by* WIFE'S FATHER *to* PAY *an* ANNUITY *during his* LIFE. POWER *for* TRUSTEES *to* INVEST TRUST MONEYS *in* PURCHASE *of a* RESIDENCE.

THIS SETTLEMENT (*b*), made the —— day of ——, 19—, BETWEEN [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; [*husband's father*], of, &c., of the third part; [*wife's father*], of, &c., of the fourth part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the fifth part. Parties.

WHEREAS a marriage is intended shortly to be solemnized between the husband and wife. Recitals: of intended marriage;

AND WHEREAS the wife is now under the will of her uncle [*testator*], of, &c., dated, &c., and proved, &c., absolutely entitled in possession, as one of the children of her father the said [*wife's father*] by her mother [*wife's mother*], deceased, to one equal ——th part or share of the residuary personal estate of the said [*testator*], which so far as it has now been realised or ascertained consists of of title of wife to share of residuary estate under a will;

(*b*) Stamp, 5*s.* per 100*l.* or part of 100*l.* of the value of the wife's share, and also of the amount of the gross sum covenanted to be paid by the husband's father. It would seem that the deed should also bear a stamp of 2*s.* 6*d.* per 5*l.* of the annuity covenanted to be paid by the wife's father (see *ante*, p. 362, note (*p*)), and 10*s.* in respect of the covenant to settle the wife's after-acquired property, if inserted; but the stamps should be adjudicated.

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or is represented by the several sums of money, stocks, funds, shares and securities specified in the schedule hereto, now standing in the names of or otherwise vested in or under the legal control of [*executors*], the executors of the said will, and the wife may, in the event of the death of any of the other children of the said [*wife's father*] by the said [*wife's mother*], deceased, being sons or a son under the age of twenty-one years, or, being daughters or a daughter under that age and without having been married, become entitled to a further share or further shares in the said residuary personal estate.

of agreement to settle wife's share;

AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that all the share or shares to which the wife is now or may hereafter become entitled as aforesaid, of or in the said residuary personal estate of the said [*testator*], should be assigned to the said [*trustees*] in manner hereinafter appearing, upon the trusts and with and subject to the powers and provisions hereinafter declared concerning the same.

of agreement by husband's father to enter into covenant for payment of gross sum; and of agreement by wife's father to pay annuity, &c.

AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the said [*husband's father*] should enter into the covenant on his part hereinafter contained for payment of the sum of £——, and of the interest thereon in manner hereinafter appearing; and it was further agreed that the said [*wife's father*] should enter into the covenant on his part hereinafter contained for payment of the annuity of £—— hereinafter mentioned.

AND WHEREAS [*recital of agreement to settle after-acquired property of wife*, ante, *p.* 336].

NOW THIS DEED WITNESSETH that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

Assignment by wife of share of residuary estate (*c*).

1. The wife, with the approbation of the husband (hereby testified), hereby as settlor assigns unto the said [*trustees*], ALL THAT one equal ——th part or share to which she is entitled under the hereinbefore recited will of the said [*testator*] as aforesaid, and all other (if any) the part or share, parts or shares to which she is now or will in any event become entitled of or in the residuary personal estate of the said [*testator*], and the investments now or hereafter representing the same respectively, subject

(*c*) Notice of this assignment should be given to the trustees of the will.

to all prior interests affecting the same respectively: To HOLD all the premises hereinbefore assigned unto the said [*trustees*], in trust for the wife until the solemnization of the said intended marriage, and thereafter, upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Habendum.

2. The said [*trustees*], their executors, administrators, and assigns, shall stand possessed of the said part or share, parts or shares, and premises hereinbefore expressed to be assigned, as and when the same shall be received by them respectively: Upon trust that the said [*trustees*] and the survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), may either permit the same premises, or such parts thereof as shall be invested in any stocks, funds, shares, or securities hereby authorised for investment, to remain in their actual state of investment respectively, or as to such of the same premises as shall be so invested, may, with the consent of the husband and wife, or the survivor of them, during their, his or her lifetime, and after the death of such survivor, at the discretion of the trustees or trustee, and as to such parts thereof as shall not be so invested, shall sell and convert into money the same, and invest the proceeds of such sale and conversion in their or his names or name in or upon any stocks, shares, funds, or securities hereby authorised, and may from time to time with the like consent, or at the like discretion, transpose any of such investments into others of any nature hereby authorised.

Trusts of share or shares assigned by wife.

3. The said trustees or trustee shall, during the joint lives of the said husband and wife, pay the income of the premises hereby assigned and the investments for the time being representing the same (hereinafter called "the wife's fund"), unto the wife without power of anticipation.

Usual trusts for wife, husband, and issue of marriage.

4. [*Trust of income for survivor of husband and wife for life,* ante, *Precedent I., clause* 3, *p.* 338.]

5. [*Remainder for issue as husband and wife appoint; remainder as survivor shall appoint, and in default of appointment for children equally at twenty-one or marriage,* ante, *Precedent I., clause* 4, *p.* 338.]

6. [*Hotchpot clause,* ibid., *clause* 5, *p.* 339 (*d*).]

(*d*) As to maintenance and advancement, see *ante,* pp. 339 and 340, notes (*n*) and (*o*).

VI. OF WIFE'S SHARE OF PERSONAL ESTATE UNDER A WILL, AND OF ANNUITY AND OTHER BENEFITS SECURED BY COVENANT, &c.

7. [*Ultimate trust for wife in default of issue*, ibid., *clause* 7, *p.* 341.]

8. [*Covenant to settle wife's after-acquired property*, ibid., *clause* 8, *p.* 342.]

Covenant by husband's father for payment of gross sum and interest.

9. The said [*husband's father*] hereby covenants with the said [*trustees*] in manner following, that is to say, that if the said intended marriage shall be solemnized, he the said [*husband's father*], his executors or administrators, will, within six calendar months thereafter, pay to the trustees or trustee the sum of £——, with interest thereon at the rate of 4 per cent. per annum from the day of the solemnization of the said intended marriage: AND ALSO as long after the expiration of such six months as aforesaid as the said sum of £——, or any part thereof, shall remain unpaid, will pay to the said trustees or trustee interest on the said sum, or so much thereof as shall for the time being remain unpaid, at the same rate, by equal half-yearly payments, whereof the first shall be made at the end of six calendar months next after the solemnization of the said intended marriage.

Proviso that trustees shall not compel payment of sum, unless required so to do.

10. PROVIDED ALWAYS, that the said trustees or trustee shall not require payment of the said sum of £——, or any part thereof, in the lifetime of the said [*husband's father*], or within twelve calendar months after his death, except upon the request in writing of the husband and wife, or the survivor of them, and, after the death of such survivor, in the lifetime of the said [*husband's father*], or within twelve calendar months after his death, without the concurrence of all the trustees of these presents for the time being if more than one, and that the said trustees or trustee shall not be responsible for any loss occasioned by their or his omission to require payment of the said sum of £—— in the lifetime of the said [*husband's father*], or within twelve calendar months after his death, except when so required as aforesaid.

Declaration of trusts of sum covenanted to be paid by husband's father.

11. The trustees or trustee shall stand possessed of the said sum of £—— hereinbefore covenanted to be paid by the said [*husband's father*] as and when the said sum, or any part thereof, shall have been received, upon trust to invest the same in manner aforesaid, with the like power to vary such investments; and shall stand possessed of the same sum of £——, and the investments representing the same (hereinafter called "the husband's fund") and the income thereof respectively, upon trust to pay the income

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thereof unto the husband and his assigns during his life; AND from and after his death the trustees or trustee shall hold the husband's fund and the income thereof, upon the trusts, and with and subject to the powers and provisions herein declared and contained concerning the wife's fund, or as near thereto as the deaths of parties and other circumstances will admit, save and except that if there shall be no child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then subject to the trusts, powers and provisions herein declared and contained concerning the same premises, or by law vested in the said trustees or trustee, the said trustees or trustee shall stand possessed of the husband's fund, or so much thereof as shall not have been applied under any such trusts, powers, or provisions, and the investments and income thereof, in trust for the husband absolutely.

Covenant by wife's father for payment of an annuity.

12. The said [*wife's father*], with the privity and approbation of the husband and wife hereby covenants with the said [*trustees*] that, if the said intended marriage shall be so solemnized, he the said [*wife's father*], or his executors or administrators, will, during the life of him, the said [*wife's father*], if and so long as the husband and wife, or the survivor of them, or any issue of the marriage shall be living, pay to the trustees or trustee the yearly sum of £—— by equal half-yearly payments, the first of such payments to be made at the end of six calendar months after the marriage.

Trusts of annuity.

13. The trustees or trustee shall from time to time, while the said yearly sum of £—— shall be payable, pay and apply the same to the person or persons, for the purposes, and in the manner, to whom, and for and in which the income of the wife's fund would for the time being be payable or applicable, under or by virtue of the trusts, powers, and provisions hereinbefore declared concerning the same.

Proviso that trustees shall not compel payment of annuity, unless required so to do.

14. PROVIDED ALWAYS, that the said trustees or trustee shall not require payment of the said yearly sum of £——, or any part thereof, except upon the request in writing of the husband and wife, or the survivor of them, and after the death of such survivor of them without the concurrence of all the trustees for the time being of these presents, if more than one; AND that the trustees or trustee shall not, nor shall any of them be responsible for any loss occasioned by reason of their or his not having en-

VI. OF WIFE'S SHARE OF PERSONAL ESTATE UNDER A WILL, AND OF ANNUITY AND OTHER BENEFITS SECURED BY COVENANT, &c.

forced the covenant lastly hereinbefore contained except when so required as aforesaid.

15. PROVIDED ALWAYS, that the trustees or trustee shall at any time, upon the request in writing of the husband and wife, or the survivor of them, raise by sale or conversion into money of a competent part of the husband's fund and of the wife's fund, or of either of such funds, any sum not exceeding £——, and lay out the sum so raised in the purchase of some freehold or leasehold messuage or dwelling-house, situate in England and Wales (but so that any leaseholds be held for an absolute term, of which not less than —— years shall be then unexpired), with suitable offices and outbuildings, and either with or without stables, gardens, or other pleasure grounds, and lands to be held and occupied therewith, and in payment of the expenses of and incidental to such purchase, and also (if the trustees or trustee shall in their or his discretion think fit) of the expenses of and incidental to putting into good repair and condition the said messuage so to be purchased, and of making the same and the gardens and pleasure grounds thereof (if any) fit for convenient habitation and occupation; and shall cause the same messuage and premises, when so purchased, to be conveyed and assured unto the trustees or trustee and their or his executors, administrators, and assigns respectively, according to the nature or quality thereof respectively, to be held by them or him, upon trust, subject to and with the consent in writing of the husband and wife, and the survivor of them, and, after the death of such survivor, at the discretion of the trustees or trustee, to sell the said messuage and premises so purchased, or any part thereof.

Power to invest trust moneys in purchase of a residence (*e*);

trust for resale;

AND until such sale the trustees or trustee shall permit the husband and wife, and the survivor of them, to have the personal use and occupation of the same messuage and premises as a residence so long as they, he, or she shall live, and when and so often as they, he, or she shall think fit to reside in the same messuage, they, he, or she keeping the said messuage and premises insured against fire to the full value thereof in their, his, or her name, or in the names of the trustees or trustee, and also keeping the same

Proviso as to occupation and letting residence purchased.

(*e*) For a general power to invest trust funds in purchase of land, see *ante*, p. 367, clause 15.

messuage in tenantable repair, and paying the taxes and other outgoings affecting the same (*f*).

16—21. [*Investment clauses, Precedent I., clauses* 15 *to* 18, ante, *pp.* 348 et seq.]

22. [*Power to appoint new trustees,* ibid., *clause* 20, *p.* 353.]

23. [*Power to employ trustee agents, and to charge for services,* ibid., *clause* 21, *p.* 353.]

In witness, &c.

The Schedule hereinbefore mentioned.

VII. ASSIGNMENT *on* Marriage *of a* Portion *belonging to the* Intended Wife, *raisable out of* Settled Lands, *of which her* Eldest Brother *is* Tenant *for* Life, *to the* Trustees, *to be held by them upon the* Trusts *of an* Indenture *of* Settlement *of even* Date (*g*). (*See next* Precedent.)

THIS SETTLEMENT (*h*), made the —— day of ——, Between [*intended husband*], of, &c., of the first part; [*intended wife*], of, &c., of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part. Parties.

Whereas a marriage is intended shortly to be solemnized between the said [*intended husband*] and the said [*intended wife*]. Recitals: of intended marriage;

And whereas under or by virtue of an indenture of settlement dated, &c., and made between [*parties*] (being a settlement of lands and hereditaments situate at ——, in the county of ——, of which [*brother*], the eldest brother of the said [*wife*], is now tenant for life in possession under the same settlement), and by of wife's title to portion;

(*f*) The trustees have all the powers of a tenant for life under the S. L. A. 1925: see sect. 28 of L. P. A. 1925; and may delegate powers of management until sale to the beneficiaries: sect. 29, *ibid.*

(*g*) Notice of this assignment should be given to the trustees of the original settlement: see L. P. A. 1925, s. 137.

(*h*) Stamp, 10*s.* The *ad valorem* stamp will be on the settlement of even date: see Stamp Act, 1891, s. 106. But the stamp should be adjudicated.

VII. ASSIGNMENT OF PORTION ON MARRIAGE.

virtue of the trusts of a term of —— years by the same indenture limited in the said lands and hereditaments for raising portions for the daughters and younger sons of the said [*wife's father*] and [*wife's mother*], both since deceased, and by virtue of an appointment in exercise of a power in that behalf contained in the said indenture of settlement made by the will of the said [*wife's father*], dated, &c., and proved, &c., the said [*wife*] is absolutely entitled to the sum of £——, raisable out of the said lands and hereditaments, and now payable to her, but which has not yet been raised and paid, with interest until payment at the rate of 4 per cent. per annum, and all interest on the said sum has been paid up to the —— day of —— now last past.

of agreement for assignment of portion.

And whereas, upon the treaty for the said intended marriage it was agreed that the said portion or sum of £—— should be assigned to the said [*trustees*] in manner hereinafter appearing upon the trusts hereinafter declared and contained concerning the same.

Assignment of portion.

NOW THIS DEED WITNESSETH that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said [*wife*], with the approbation of the said [*husband*] (hereby testified), hereby as settlor assigns unto the said [*trustees*], All that the said portion or sum of £——, to which the said [*wife*] is entitled as aforesaid, raisable by virtue of the trusts of the said term of —— years limited by the said indenture of settlement, and by virtue of the said will of the said [*wife's father*] as hereinbefore recited, and all interest now or to become payable in respect of the same sum, To

Habendum.

hold the premises hereby assigned unto the said [*trustees*], in

In trust for wife till marriage and afterwards upon trusts, &c., declared by indenture of even date.

trust for the said [*wife*] until the said intended marriage shall take place, And thereafter upon such trusts, and with and subject to such powers and provisions as are declared and contained concerning the same by and in an indenture of even date herewith, and to be executed immediately after these presents, and to be made between the same parties as are parties to these presents: And it is hereby declared that the statutory power of appointing a new trustee or new trustees of these presents shall be vested in the said [*husband*] and [*wife*] during their joint lives and in the survivor of them during his or her life.

In witness, &c.

VIII. SETTLEMENT *on* MARRIAGE *of a* PORTION *belonging to the* INTENDED WIFE *which has been* ASSIGNED *to the* TRUSTEES *by an* INDENTURE *of even* DATE (*see last* PRECEDENT), *and of several* POLICIES *of* ASSURANCE *on the* LIFE *of the* HUSBAND *which have been effected by him in his own* NAME. FIRST LIFE INTEREST *in* WIFE'S FUND *to* WIFE, *with* POWER *for* TRUSTEES *to pay* INCOME *to the* HUSBAND *or to* WIFE'S BANKERS. SECOND LIFE INTEREST *to* HUSBAND *terminable on* ALIENATION, *&c.* TRUSTS *for* ISSUE (SPECIAL). PROVISIONS *for keeping up the* POLICIES. POWER *for* HUSBAND *to* REDEEM POLICIES. VIII. OF PORTION BELONGING TO WIFE.

THIS SETTLEMENT (*i*), made the —— day of ——, 19—, BETWEEN [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part. Parties.

WHEREAS a marriage is intended shortly to be solemnized between the husband and wife. Recitals: of marriage, &c.;

AND WHEREAS [*recite wife's title to portion, as in last precedent*].

AND WHEREAS, upon the treaty for the said intended marriage it was agreed that the said portion should be settled in manner hereinafter appearing.

AND WHEREAS, in part performance of the said agreement, by an indenture bearing even date herewith, but executed before the execution of, and expressed to be made between the same parties as are parties to these presents, the wife, with the approbation of the husband, has assigned the said portion or sum of £——, and the interest now due and to become due thereon, to the said [*trustees*], in trust for the wife until the said intended marriage should take place, and thereafter upon such trusts, and with and subject to such powers and provisions, as should be declared and contained concerning the same by an indenture of even date therewith therein referred to, being these presents. of assignment of portion to trustees;

(*i*) Stamp, 5*s*. per 100*l*. or part of 100*l*. of the value of the portion and of the amount assured by the policies (see *ante*, p. 335, note (*c*)); also 10*s*. in respect of the covenant to settle after-acquired property.

VIII. OF PORTION BELONGING TO WIFE.

of husband's title to policies.

AND WHEREAS the husband is absolutely entitled to the several policies on his life hereinafter mentioned, and, upon the treaty for the said intended marriage, it was agreed that the same policies should be respectively assigned to the said [*trustees*] in manner hereinafter appearing, upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

AND WHEREAS, &c. [*recite agreement to settle wife's after-acquired property, see Precedent I.*, ante, *p.* 336.]

Declaration of trusts of portion;

NOW THIS DEED WITNESSETH that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, it is hereby agreed and declared by and between the parties hereto as follows:—

1. The said [*trustees*], or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall, from and after the said intended marriage, stand possessed of the said portion or sum of £—— and interest thereon, as and when the same shall be received by them or him, upon trust

trust for investment;

to invest the said portion or sum of £——, or so much thereof as shall for the time being have been received by them or him in their or his names or name in or upon any stocks, funds, shares, or securities hereby authorised, and may from time to time vary or transpose such investments into others of any nature hereinafter authorised.

trust of income for wife for life.

2. The trustees or trustee shall pay the interest or income of the said portion, and of the investments for the time being representing the same (which portion or sum and investments are hereinafter called "the trust fund") unto the wife during her life, without power of anticipation.

Power for trustees to pay income to husband or to wife's bankers.

3. PROVIDED ALWAYS, that the trustees or trustee may pay any annual income to which the wife shall at any time during the now intended coverture be entitled under the trusts of these presents, upon the request in writing of the wife [either to the husband or] into such bank or to such agent as the wife shall at any time or times during the said intended coverture nominate in that behalf, to be placed to her account at such bank or with such agent, and to continue to make such payments accordingly until she shall in writing otherwise direct.

VIII. OF PORTION BELONGING TO WIFE.

4. From and after the death of the wife, in case the husband shall then be living (*k*), subject [to the proviso next hereinafter contained and] to the powers of appointment hereinafter declared, the trustees shall hold the income of the trust fund during his life on protective trusts for his benefit for the period of his life within the meaning of sect. 33 of the Trustee Act, 1925.

Trust for husband for life determinable in certain events.

5. From and after the death of the survivor of the husband and wife the trustees or trustee shall hold the said trust fund and the income thereof in trust, &c. [*for issue of marriage as husband and wife shall jointly appoint, remainder as survivor shall appoint*, ante, *p.* 338, *clause* 4].

Usual trusts in favour of children and issue.

6. If the husband shall survive the wife, and if the trust hereinbefore declared in his favour shall fail or determine in his lifetime, the several powers hereinbefore given to him jointly with the wife, and, after her death, alone, of making appointments in favour of the issue of the said intended marriage, shall continue to be exercisable notwithstanding such failure or determination.

Power for husband to make appointments notwithstanding the determination of his life interest (*l*).

7. In default of any such appointment as aforesaid and so far as no such appointment shall extend, if there shall be more than one child who being sons or a son shall attain the age of twenty-one, or being daughters or a daughter shall attain that age or marry,

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(*k*) It may be advisable here to add the following proviso, so as to enable the husband to charge, or release his life interest in favour of a child:—

"PROVIDED ALWAYS, that nothing herein contained shall prevent the husband from charging or otherwise disposing of the said income, or any part thereof, during his life or any less period [with the consent in writing of the trustees or trustee] in favour of any child of the said intended marriage who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry within six calendar months after the date of such charge or disposition."

Proviso that husband may charge, &c. income in favour of a child.

As to determinable life interests, see *ante*, p. 338, note (*g*).

(*l*) Where, as in the present case, a discretionary trust follows a determinable life interest to the husband, it seems generally advisable that the power of appointment should continue to be exercisable by him; otherwise it may be better to negative the exercise of the power after cesser of the life interest. In any case the intention should be expressed.

VIII. OF PORTION BELONGING TO WIFE.

Trusts in default of appointment for children (special in the event of there being only one child).

then the trustees or trustee shall stand possessed of the said trust fund and the income thereof in trust for all or both such children in equal shares; but if there shall be only one such child, then, as to one moiety of the said trust fund in trust for such only child, and as to the other moiety, upon the same trusts as are herein declared and contained concerning the said trust fund in the event of there being no such child as aforesaid.

8. [*Hotchpot clause*, ut ante, *p.* 339, *clause* 5 (*m*).]

9. [*Ultimate trusts in default of issue in favour of wife*, *p.* 340, *clause* 7.]

10. [*Covenant to settle after-acquired property of wife*, *p.* 342, *clause* 8, *substituting* "trust fund" *for* "wife's fund."]

Assignment of policies (*n*).

11. The husband, with the approbation of the wife, hereby as settlor assigns unto the said [*trustees*], ALL THOSE —— several policies of assurance, the particulars whereof are specified in the schedule hereto, and all moneys thereby assured or to become payable thereunder respectively, and the full benefit thereof, TO HOLD the same unto the said [*trustees*], upon trust for the husband until the said intended marriage shall take place, and thereafter upon the trusts, and with and subject to the powers and provisions herein declared and contained of and concerning the trust fund, or as near thereto as the deaths of parties and other circumstances will admit, save and except that if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, subject to the trusts, powers and provisions herein declared and contained concerning the trust fund, or by law vested in the trustees or trustee, the trustees or trustee shall stand possessed of the said policy moneys and the investments and income thereof in trust for the husband absolutely.

Habendum.

Declaration of trusts by reference.

12—14. [*Covenants by husband for keeping up the policies, and proviso as to bonuses and power to sell or surrender*, ut ante, *pp.* 346 et seq., *clauses* 11, 12 *and* 13, *with the variations shown in brackets.*]

(*m*) As to maintenance and advancement, see *ante*, pp. 339 and 340, notes (*n*) and (*o*).

(*n*) Notice of this assignment should be given to the society.

·VIII. OF PORTION BELONGING TO WIFE.

15. The trustees or trustee may in their or his uncontrolled discretion from time to time apply any part of the income of the trust premises hereby settled or covenanted or agreed to be settled, or if that shall be insufficient, then any part of the capital of any of the same trust premises in or towards payment of the annual premiums or other sums, if any, necessary for keeping on foot or restoring the said respective policies of assurance, or any of them, or any such substituted policy as aforesaid, or for effecting any such substituted policy, or to borrow the amount required for any such purpose at interest on the security of the said policies, and the other trust premises hereby settled or covenanted or agreed to be settled, or any part thereof.

Power to apply income or capital of trust funds in keeping up policies.

16. [*Proviso for indemnity of trustees, Precedent I., clause* 14, *p.* 348, *with variations in brackets.*]

17. PROVIDED ALWAYS, that if the husband shall at any time during his life pay to the trustees or trustee the sum of £——, then, from and after such payment, the trustees or trustee shall stand possessed of the said policies hereby assigned, and such substituted policy or policies, if any, as aforesaid, and all moneys thereby assured or to become payable thereunder, in trust for the husband absolutely; AND shall stand possessed of the said sum of £——, as and when the same shall be received by them or him, upon trust to invest the same in like manner as is herein directed with regard to the investment of the said trust fund hereby settled, with the like power of varying investments: AND shall pay the income of the said sum of £——, and of the investments for the time being representing the same, unto the husband during his life; AND from and after the death of the husband shall pay the income thereof to the wife, if she shall survive him, but so that she shall not during the coverture have power to anticipate such reversionary life interest; AND from and after the death of the survivor of them the husband and wife shall stand possessed of the said sum of £—— and the investments for the time being representing the same and the income thereof upon the like trusts, and with and subject to the like powers and provisions in favour or for the benefit of the children or remoter issue of the said intended marriage, or any of them, as are hereinbefore declared and contained concerning the trust fund, or as near

Power for husband to pay a gross sum in lieu of policies.

Trusts of sum paid by husband:

for husband for life;

for wife surviving for her life;

remainder for children upon trusts by reference to settled funds;

VIII. OF PORTION BELONGING TO WIFE.

thereto as the deaths of parties and other circumstances will admit.

in default of children, for husband absolutely.

18. If there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, subject to the trusts and powers hereinbefore declared and contained or referred to, or by law vested in the said trustees or trustee, the said trustees or trustee shall stand possessed of the said sum of £—— and the investments for the time being representing the same and the income thereof in trust for the husband absolutely (*o*).

19—21. [*Investment clauses, Precedent I., clauses* 15 *to* 17, *pp.* 348 et seq.]

22. [*Special indemnity as to investment,* ibid., *clause* 18, *p.* 352.]

23. [*Power to apportion blended trust funds,* ibid., *clause* 19.]

24. [*Power to appoint new trustees,* ibid., *clause* 20.]

25. [*Power to employ trustee agents and charge for professional business,* ibid., *clause* 21, *p.* 353.]

In witness, &c.

The Schedule above referred to.

(*o*) To extend the range of next of kin under the ultimate trusts, see note (*z*), *ante,* p. 346.

IX. SETTLEMENT *on* MARRIAGE, *of* STOCKS, *&c., belonging to the* INTENDED HUSBAND, *who is a* FOREIGNER (*p*), *and of a* LEGACY *belonging to the* INTENDED WIFE (*an* INFANT (*q*). *The* LIFE INTEREST *of the* WIFE *in the* PROPERTY *settled by the* HUSBAND *being made* CONDITIONAL *on her* CONFIRMATION *of the* SETTLEMENT *when she comes of* AGE. COVENANT *by the* HUSBAND *that* WIFE *shall* CONFIRM *the* SETTLEMENT. DECLARATION *that the* SETTLEMENT *shall be* CONSTRUED *according to the* LAW *of* ENGLAND.

IX. SETTLEMENT ON MARRIAGE OF INFANT SUBJECT TO CONFIRMATION.

THIS SETTLEMENT (*r*), made the —— day of ——, BETWEEN [*intended husband*], of, &c., domiciled in —— (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), being an infant of the age of —— years or thereabouts, of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part.

Parties.

WHEREAS a marriage is intended shortly to be solemnized between the husband and the wife.

Recitals: of intended marriage;

AND WHEREAS the husband is absolutely entitled to the stocks, funds, shares, and securities specified in the first schedule hereto; AND, upon the treaty for the said intended marriage, it was agreed that the same shall be forthwith transferred to the said [*trustees*] in trust for the husband until the said intended marriage, and thereafter upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

of husband's title to stocks, &c., and agreement for settlement thereof;

(*p*) As to the operation of a settlement between persons of different domiciles, see Story, Conflict of Laws, s. 276; *Re Mackenzie*, [1911] 1 Ch. 578, and the cases there cited; and Key & Elph. 10th ed. vol. 2, p. 666, note (*a*).

(*q*) As to the effect of settlements on marriage by infants, see Married Women's Property Act, 1907, s. 2. The infant must repudiate within a reasonable time. As to what is reasonable, see *Carnell* v. *Harrison*, [1916] 1 Ch. 328; applying *Carter* v. *Silber*, [1892] 2 Ch. 278; and *Edwards* v. *Carter*, [1890] A. C. 360. A married infant can give a valid receipt for all income: see L. P. A. 1925, s. 21. An infant may not be a trustee: *ibid.* s. 20. The Infants Settlements Act, 1855, is not affected by recent legislation except as to vesting legal estate in land in an infant: S. L. A. 1925, s. 27 (3).

(*r*) Stamp, 5*s.* per 100*l.* or part of 100*l.* of value of property settled by husband and wife respectively as on the day of the date of the settlement; but the stamp must be adjudicated.

IX. SETTLEMENT ON MARRIAGE OF INFANT SUBJECT TO CONFIRMATION.

of wife's title to legacy, and agreement for settlement thereof;

AND WHEREAS the wife is absolutely entitled under the will of [*testator*], late of, &c., deceased, dated, &c., and proved, &c., to a legacy of £——, which is now represented by the several stocks, funds, shares, and securities specified in the second schedule hereto, now standing in the names of [*executors*], the executors of the said will; AND, upon the treaty for the said intended marriage, it was agreed that the same legacy should be assigned in manner hereinafter appearing to the said [*trustees*], upon trust for the wife until the said intended marriage, and thereafter upon the trusts, and with and subject to the powers and provisions hereinafter declared of and concerning the same.

of intention that the settlement shall be regulated by English law.

AND WHEREAS it is the intention of the parties hereto that these presents shall be construed, and that the rights of all persons claiming under or by virtue of these presents shall be regulated by the law of England, in manner hereinafter appearing.

Testatum.

NOW THIS DEED WITNESSETH that, in pursuance of the said agreement, and in consideration of the said intended marriage, it is hereby agreed and declared by and between the parties hereto as follows:—

Agreement that husband's trust fund shall be held upon trusts to be declared.

1. The said [*trustees*], or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall stand possessed of the several stocks, funds, shares, and securities specified in the first schedule hereto, and the investments into or for which the same respectively, or any part thereof, may be converted or transposed (hereinafter called "the husband's fund"), upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same.

Assignment of legacy (*s*).

2. The wife, with the approbation of the husband, hereby as settlor assigns unto the said [*trustees*] ALL THAT legacy or sum of £—— so bequeathed to her as aforesaid, and all investments now or hereafter representing the same, and all moneys to become due and payable in respect of the same legacy, To HOLD the said legacy and premises (hereinafter called "the wife's fund") upon trust for the said wife until the said intended marriage, and thereafter upon the trusts and with and subject to the powers and provisions hereinafter declared of and concerning the same.

Habendum.

Upon trusts to be declared.

(*s*) Notice of this assignment should be given to the executors: see L. P. A. 1925, s. 136.

3. From and after the solemnization of the said intended marriage the trustees or trustee shall either permit the husband's fund and also the wife's fund, as and when the same shall be paid or transferred to them, to remain in their actual state of investment so long as the trustees or trustee shall think fit, or shall, with the consent in writing of the husband and wife during their joint lives, or of the survivor of them during his or her life, and after the death of such survivor, at the discretion of the trustees or trustee, from time to time sell and convert into money all or any part of such funds respectively, and invest the proceeds of such sale in or upon any of the investments hereby authorised, with power to vary or transpose such investments into or for others of a nature hereby authorised.

Trust for retention of trust funds or sale and conversion and investment of proceeds.

4. The trustees or trustee shall, during the joint lives of the husband and wife, pay the income of the husband's fund to the husband, and the income of the wife's fund to the wife, without power of anticipation. AND from and after the death of either of them the said husband and wife shall pay the income of as well the husband's fund as the wife's fund to the survivor of them during his or her life.

Trust to pay income of husband and wife's funds to husband and wife respectively for life and then to survivor.

5. From and after the death of the survivor of the said husband and wife, the trustees or trustee shall stand possessed of the husband's fund and the wife's fund, and the income thereof respectively, in trust, &c. [*continue trusts for issue as husband and wife shall appoint, and in default as survivor shall appoint, and in default of any appointment for children equally at twenty-one or marriage, as in Precedent I., clause* 4, ante, *p.* 338].

After death of survivor, for issue as husband and wife or survivor shall appoint.

6. [*Hotchpot clause,* ut ante, *p.* 339, *substituting for* "wife's fund," "husband and wife's fund, or either of them" (*t*).]

7. [*Trusts of capital in default of issue as in Precedent V., clause* 18, ante, *p.* 352.]

8. PROVIDED ALWAYS, that the life interest hereinbefore given to the wife in the husband's fund is conditional upon her confirming the settlement hereby intended to be made of the wife's fund, and that she shall execute a proper deed confirming such settlement, and shall execute and do, or cause to be executed and

Proviso that wife's life-interest in husband's trust fund shall not take effect unless she

(*t*) As to maintenance and advancement, see *ante,* pp. 339 and 340, notes (*n*) and (*o*).

IX. SETTLEMENT ON MARRIAGE OF INFANT SUBJECT TO CONFIRMATION.

done, all transfers, assurances, and things which may be necessary or expedient for the purpose of effectually vesting the wife's fund in the trustees or trustee within six calendar months of the day when she shall attain the age of twenty-one years, and if she shall refuse or neglect so to do within the time aforesaid, then and in such case the life interest hereinbefore given to the wife in the husband's fund shall, immediately upon the expiration of the six calendar months aforesaid, absolutely determine, and the trusts, powers, and provisions hereinbefore declared and contained concerning the husband's fund shall take effect in all respects as if the wife were then actually dead.

shall confirm the settlement on coming of age.

Covenant by husband to confirm the settlement.

9. The husband hereby covenants with the said [*trustees*] that if the wife shall die under the age of twenty-one years, or if, after having attained that age, she shall refuse or neglect to confirm this present settlement in manner aforesaid, and if the husband shall, under or by virtue of any act or deed of the wife during her lifetime, or under her will, or as her administrator by virtue of her intestacy, become entitled to the wife's fund, or any part thereof, then and in any of such cases the husband, his executors or administrators, will forthwith, at the cost of the trust estate, execute, and do, or cause to be executed and done, all such deeds, assurances, and things as may be necessary for confirming this settlement, and making the same legally binding upon the wife, as respects the wife's fund, or such part thereof to which he shall so become entitled as aforesaid, and effectually vesting the same in the trustees or trustee, upon the trusts, and with and subject to the powers and provisions hereinbefore declared and contained concerning the same (*u*).

(*u*) If a conditional settlement made of an infant's property on her marriage contains a covenant by her father to pay an annuity or make other provision for her benefit, a proviso to the following or a like effect may be here inserted after such covenant:—

Proviso to be inserted where father covenants to pay annuity, &c.

"PROVIDED ALWAYS, that if the wife shall die under the age of twenty-one years, or if after having attained that age she shall refuse or neglect, within the time aforesaid, to confirm this present settlement in manner aforesaid, then immediately upon her death, or upon the expiration of six calendar months after she shall attain the age of twenty-one years, as the case may be, the yearly sum of £—— hereinbefore covenanted to be paid by the wife's father

IX. SETTLEMENT ON MARRIAGE OF INFANT SUBJECT TO CONFIRMATION.

10. And it is hereby agreed and declared by and between the parties hereto, and particularly by the husband, that these presents shall be construed and the trusts, powers, and provisions herein declared and contained shall be administered, exercised, and carried into effect, and that the rights of all parties claiming under or by virtue of these presents shall be regulated in like manner in all respects as if the husband and wife had been at the time of their marriage, and were now, and intended henceforth, during their respective lives, to continue and be domiciled in England.

Proviso that the settlement shall be regulated by English law.

11—14. [*Investment clauses, Precedent I., clauses* 15 *to* 18, ante, *pp.* 348 et seq.]

15. [*Power to apportion blended trust funds,* ibid., *clause* 19, ante, *p.* 353.]

16. [*Power to appoint trustees,* ibid., *clause* 20; *or adapt clause* 32, *Precedent V., p.* 370.]

17. [*Power to employ trustee agents and charge for professional business,* ante, *p.* 353, *clause* 21.]

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

X. DEED *of* Confirmation *by a* Wife *on attaining* Twenty-one Years *of a* Settlement *made by her while an* Infant (*x*).

TO ALL TO WHOM these presents shall come (*y*), I [*wife*], the wife of [*husband*], of, &c., send greeting: Whereas these Recitals:

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shall thenceforth cease to be payable, and the covenant on his part to, &c. [*state effect of provision covenanted to be made*], shall in the event of such death, refusal, or neglect, be absolutely void and of no effect."

(*x*) A confirmation in the above form will be sufficient without any assignment, as regards any equitable interest either in possession or rever-

(*y*) Stamp, 10*s.*, as it would seem that this is not a *voluntary disposition* within the Finance (1909-10) Act, 1910, s. 74; but the stamp should be adjudicated.

X. DEED OF CONFIRMATION BY A WIFE.

that the deed is supplemental to settlement;

that wife has attained full age.

Confirmation of settlement.

presents are supplemental to an indenture dated, &c., and made between the said [*husband*], of the first part; myself (therein called [*maiden name*], spinster), of the second part; and [*trustees*], of the third part, being the settlement executed in contemplation of the then intended marriage which was shortly afterwards solemnized between the said [*husband*] and myself; AND WHEREAS I attained the age of twenty-one years on the —— day of —— last, and I have agreed to confirm the said settlement in manner hereinafter appearing: NOW KNOW YE that in pursuance of the said agreement, and in consideration of the provision made in my favour by the said [*husband*] out of the "husband's fund" mentioned in the said settlement, I do hereby confirm the said settlement so far as regards the trust funds thereby expressed to be thereby assigned by me and which, with the investments representing the same, are therein called the "wife's fund," and all moneys, stocks, funds, shares, and property whatsoever by the said settlement expressed or intended to be settled by me, to the intent that the same settlement shall take effect as fully and effectually in all respects as if I had been, at the time of the execution thereof, of the full age of twenty-one years.

IN WITNESS, &c.

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sion, or any personal chattels expressed to be assigned by the settlement. It will, of course, be necessary to give notice of the confirmation to the trustees of any prior settlement or will under which the wife takes an equitable interest comprised in her settlement.

XI SETTLEMENT *on* MARRIAGE *with the* SANCTION *of the* COURT *under the* INFANTS' SETTLEMENT ACT (18 *&* 19 *Vict. c.* 43) (*z*) *of the* WIFE'S REVERSIONARY INTEREST *to which she is* ENTITLED *in the* PERSONAL ESTATE *of a* TESTATOR. VARIATIONS *where the* WIFE *is a* WARD *of* COURT.

XI. SETTLEMENT ON MARRIAGE UNDER INFANTS' SETTLEMENT ACT.

THIS SETTLEMENT (*a*), made the —— day of ——, 19—, BETWEEN [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c., an infant of the age of —— years (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., [*trustee*], of, &c., [*trustee*], of, &c., and [*trustee*], of, &c., of the third part: WHEREAS a marriage is intended shortly to be solemnized between the husband and wife, with the consent of [*wife's mother*], the mother and guardian of the wife [*recite wife's title to reversionary interest under her father's will, and agreement to settle the same, adapting recital in Precedent V., p.* 363; *agreement to settle wife's after-acquired property, Precedent I., p.* 336]; AND WHEREAS by an order of the Chancery Division of the High Court of Justice, made by Mr. Justice ——, on the —— day of ——, in the matter of [*wife*], an infant, by [*wife's mother*], her next friend [*or*, guardian], and in the matter of the Infants' Settlement Act, 1855, the said judge, being of opinion that [the said intended marriage is a fit and proper marriage, and that] the settlement proposed to be effected by these presents is a proper settlement to be made in contemplation of the said intended marriage, and that this deed is a proper deed for giving effect to such settlement, did, pursuant to the said Act of Parliament, sanction and approve of such settlement as appears by the signature of one of the Masters

Parties.

Recitals: of intended marriage; of order of Court sanctioning settlement.

(*z*) The Infants' Settlement Act, 1855, empowers an infant upon marriage to make a valid settlement with the sanction of the Court. It may be made after the marriage: *Re Sampson and Wall,* 25 Ch. D. 482; *Re Phillips,* 34 Ch. D. 467; *Re Leigh,* 40 Ch. D. 290; see also *Re Scott,* [1891] 1 Ch. 298; *Re A. B.,* [1914] W. N. 140. See, generally, as to this Act, Seton on Decrees, 7th ed. 1015; Daniell's Chancery Practice, 8th ed. 996.

(*a*) Stamp, 5*s.* per 100*l.* of value of reversionary interest, and 10*s.* in respect of covenant to settle wife's after-acquired property. The stamps should be adjudicated.

XI. SETTLEMENT ON MARRIAGE UNDER INFANTS' SETTLEMENT ACT.

attached to his Chambers in the margin hereof, and has ordered that the said infant be at liberty, in contemplation of her marriage with the husband, to execute these presents accordingly.

Testatum.

NOW THIS DEED WITNESSETH that, in obedience to the hereinbefore recited order of the —— day of ——, 19—, and in consideration of the said intended marriage, and with the sanction of the Chancery Division of the said High Court of Justice, it is hereby agreed and declared as follows:—

Assignment by ward of Court of her reversionary share.

1. The wife, with the approbation of the husband, hereby assigns unto the said [*trustees*], ALL THAT the said moiety or other the part, share or interest to which the wife is entitled under the hereinbefore recited will of the said [*testator*] of and in the net residue of the proceeds of sale and conversion of his real and personal estate in remainder expectant on the decease of the [*testator's widow*], and subject to her life interest therein as hereinbefore mentioned; TO HOLD the same subject as aforesaid unto the said [*trustees*], upon such trusts, and with and subject to such powers and provisions as are hereinafter declared and contained concerning the same.

2. [*Trusts of premises assigned by wife to retain or sell and invest proceeds, see Precedent VI., clause* 2, ante, *p.* 373, *followed by—*

3—8. *Usual trusts for wife, husband, and issue of marriage, with ultimate trusts for benefit of wife, see Precedent I., clauses* 2 *to* 7.]

9. [*Covenant to settle after-acquired property*, ibid., *clause* 8, *p.* 342.]

Power for wife to appoint to a future husband and her children by him a moiety of the trust funds(*b*).

10. PROVIDED ALWAYS, and it is hereby agreed and declared, that if the wife shall survive the husband, it shall be lawful for the wife, at any time or times after the death of the husband, and whether she shall be covert or sole, by any deed or deeds, with or without power of revocation and new appointment, or by will or codicil, to appoint in favour of any after-taken husband, and of her child or children by any future husband or husbands, any part

(*b*) In a settlement of the property of a female infant the Court will require provision to be made out of her fortune for the issue of a future marriage: *Rudge* v. *Winnall*, 11 Beav. 98. Alternative forms of clauses making such provision will be found in Precedent I., *ante*, p. 343, clause 9 and note (*y*).

not exceeding one-half of the said trust fund hereby settled or covenanted or agreed to be settled by or on the part of the wife, but so that no such future husband shall by virtue of any such appointment take any greater interest in such property than for his life, and that the trusts, powers, and provisions in favour of the child or children of the wife by any such future husband shall be similar to those herein declared in favour of the child or children of the now intended marriage, failing which trusts, the portion of trust property to be appointed under this power shall remain subject to the trusts of this settlement, and so that no child or children of any such future marriage shall, by virtue of any such appointment, become entitled to any share or portion exceeding in amount or value the share or portion which, in the absence of any appointment under the power of appointment hereinbefore contained, a child of the now intended marriage would take or become entitled to in the said trust fund hereby settled or agreed to be settled, AND so that the interest or share of property to be appointed under this power shall not be withdrawn from the trusteeship of these presents until absolutely and indefeasibly vested in some person in possession.

11—14. [*Investment clauses, Precedent I., clauses* 15 *to* 18, *pp.* 348 et seq. (*c*).]

15. [*Power to appoint new trustees, Precedent I., clause* 20, p. 353 (*d*).]

IN WITNESS, &c. (*e*).

(*c*) This will be settled in Chambers.

(*d*) This form of settlement should not contain a power for a solicitor-trustee to charge for work done, as the Court would not allow it to be inserted.

(*e*) Notice of this settlement must be given to the trustees of the will. A reference to the record must be engrossed on the first skin of the engrossment, and the engrossment must be verified by affidavit: see Daniell's Chancery Forms, No. 1200.

XII. MARRIAGE ARTICLES FOR SETTLEMENT OF PERSONALTY.

XII. ARTICLES *for a* MARRIAGE SETTLEMENT *of* PERSONAL PROPERTY *belonging to the* INTENDED HUSBAND *and* WIFE *respectively* (*f*).

AN AGREEMENT (*g*), made the —— day of ——, BETWEEN [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the third part WITNESSETH and, in consideration of the marriage shortly intended to be solemnized between the husband and wife, it is hereby agreed and declared as follows, that is to say:—

Parties.

Testatum.

Agreement for settlement;

1. Within —— calendar months from the date of these presents, if the said intended marriage shall then have taken place, the husband and wife respectively shall transfer to the trustees the stocks, funds, and securities to which each is respectively entitled, and which are set out in the schedule hereto, namely, those to be settled by the husband in the first part thereof and hereinafter called "the husband's fund," and those to be settled by the wife in the second part thereof and hereinafter called "the wife's fund," such settlement to be prepared by the trustees as soon as may be after the said intended marriage, in accordance with the trusts, powers, and provisions hereinafter mentioned.

that husband shall transfer stock, &c., to trustees;

As to contents of intended settlement;

2. The settlement so to be prepared as aforesaid shall contain the trusts and powers and provisions following, that is to say: A trust to get in and receive all such parts of the said trust premises as shall not have been assigned or transferred unto or received by the trustees, and to invest in or upon such stocks, funds, shares,

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(*f*) As to the form of settlements in pursuance of marriage articles, see notes to *Glenorchy* v. *Bosville*, White & Tudor's L. C.; Norton on Deeds, 609; Vaizey on Settlements, 140.

(*g*) Stamp, 5*s*. per 100*l*. on the amount agreed to be settled. The stamp on the settlement made in pursuance of the articles would seem to be 10*s*. (see Stamp Act, 1891, s. 106); but it should be adjudicated, especially as it is not usual to refer to the articles when the settlement is made in pursuance of ante-nuptial articles other than by a recital, as follows:—

"WHEREAS the husband and the wife intermarried on the —— day of ——, and previous to such marriage they agreed to make such settlement as is hereinafter declared."

or securities as shall hereafter be agreed upon between the parties hereto all such parts of the same as shall not be so invested (*h*), with power for the trustees to vary such investments, but so that no investment or variation of investments shall be made during the lives or life of the husband and wife, or the survivor of them, except with their, his or her consent in writing: AND ALSO further trusts to pay the income of the husband's fund to the husband during his life, and the income of the wife's fund to the wife for her life, without power of anticipation, and after the decease of either of them to pay the income of both trust funds to the survivor, and after the death of such survivor to hold the capital and income of both trust funds, upon trust for the children or remoter issue of the said intended marriage in such shares and in manner in all respects as the husband and wife shall jointly by deed appoint; AND subject thereto as the survivor of them shall by deed or will appoint; AND subject thereto in trust for the children or child of the said intended marriage being sons or a son at twenty-one, or being daughters or a daughter at that age or on marriage, if more than one, in equal shares; AND subject to the foregoing trust (*i*), as to the husband's fund, in trust for the husband absolutely, and as to the wife's fund, in trust for such persons and purposes as the wife shall by will, or while not under coverture, by deed or will appoint, and, in default of such appointment if the wife shall survive the husband, for her absolutely, but if the husband shall survive the wife, for her next of kin as if she had died intestate and without ever having been married. The said settlement shall contain all such clauses with respect to hotchpot and other clauses as shall be thought advisable or expedient, and also a covenant or agreement for the settlement of all other or after-acquired property of or to which the wife may be or become entitled during the said intended coverture.

that husband and wife shall execute settlement, and for further assurance;

3. The husband and wife, and their respective heirs, executors, and administrators, and all other necessary parties, if any, shall, when required by the trustees, and also the trustees shall execute the said settlement, and also execute and do all such conveyances,

(*h*) It will be better, if possible, to agree as to the investments before the articles are made, and to insert an investment clause in the articles.

(*i*) As to variations where it is intended that the ultimate trusts of the husband's and wife's fortunes respectively should not be restricted to the narrow limits of the A. E. A. 1925, in case of intestacy, see *ante*, p. 341, notes (*p*) and (*q*), and p. 346, note (*z*).

XII. MARRIAGE ARTICLES FOR SETTLEMENT OF PERSONALTY.

transfers, instruments, acts, and things as may be necessary for the carrying into effect of the said settlement.

that until execution of settlement, &c., property shall be held upon trusts expressed in this agreement.

4. From and after the said marriage and until the said settlement, conveyances, transfers, instruments, acts, and things shall have been executed and done, the property hereby agreed to be settled shall be held by the persons in whom the same is vested respectively and their respective executors, administrators, and assigns, upon the trusts and subject to the powers and provisions concerning the same hereinbefore directed to be contained in the said settlement.

Interpretation clause.

5. The expression "the trustees," as hereinbefore used, shall include the said [*trustees*] and the survivor of them, or other the trustees or trustee for the time being of these presents.

As to appointment of new trustees.

6. The power of appointing new trustees of these presents and of the said intended settlement shall be vested in the husband and wife during their joint lives, and the survivor of them during his or her life.

As to expenses of settlement, &c.

7. The costs of and incident to the negotiation, preparation, engrossment, and execution of these presents and of the said settlement, and of all such conveyances, transfers, instruments, acts, and things as aforesaid, shall be paid by the husband [*or*, out of the husband's and wife's funds in equal shares].

As to determination of differences as to construction and effect of this agreement.

8. In case of any dispute or difference between the parties hereto, as to the trusts, powers, or provisions proper to be inserted in the said settlement, so as to carry into effect the stipulations hereinbefore contained, or as to the true intent and meaning of these presents, or as to any matter or thing whatsoever relating to the said settlement, and these presents respectively, such dispute or difference shall be referred to a conveyancing counsel of not less than —— years' standing, whose opinion shall be final and conclusive.

As witness, &c.

The Schedule hereinbefore mentioned.

Part I.

[*A list of securities comprising husband's fund.*]

Part II.

[*A list of securities comprising wife's fund.*]

XIII. SETTLEMENT *on* MARRIAGE *of* FURNITURE *belonging to the intended* WIFE, *for the* BENEFIT *of* HERSELF *and her* CHILDREN (*k*).

XIII. SETTLEMENT ON MARRIAGE OF FURNITURE.

THIS DEED OF SETTLEMENT (*l*), made the —— day of ——, BETWEEN [*intended husband*], of, &c., of the first part; [*intended wife*], of, &c., of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part; WITNESSETH, that, in consideration of the marriage intended shortly to be solemnized between the said [*husband*] and [*wife*], the said [*wife*], with the approbation of the said [*husband*], hereby assigns unto the said [*trustees*], ALL and singular the furniture, plate, linen, china, glass, household and domestic goods and ornaments now belonging to the said [*wife*], and more particularly set out in the schedule hereto; TO HOLD the said premises in trust for the said [*wife*] absolutely, until such marriage: AND thenceforth upon such trusts as the said [*wife*], notwithstanding coverture, shall by any writing under her hand, or by will or codicil, appoint, and subject thereto upon trust to allow the said [*wife*] to use and enjoy the same during her life; AND after her decease (*m*), in trust for such child or children of the said intended marriage as shall attain the age of twenty-one years, or marry under that age, if more than one, in equal shares; AND if there be no such child, in trust for the said [*wife*], her executors, administrators, and assigns; AND it is hereby agreed and declared that the said [*trustees*], or the survivors or survivor of them, or other the trustees or trustee for the time being of these presents, shall not be bound

Parties.

Assignment of furniture, &c.;

after marriage, in trust as wife shall appoint; and, subject thereto, for her separate use after her decease, for children at twenty-one, or marriage.

(*k*) As to the effect of assigning furniture to trustees, see *Re Magnus*, [1910] 2 K. B. 1049.

(*l*) Stamp, 5*s*. per 100*l*. or part of 100*l*. of the value of the furniture.

(*m*) If it is desired that the husband shall take a life interest as survivor, then after "And subject thereto," substitute for the words in the text—

"Upon trust to allow the said [*wife*] to use and enjoy the same during the joint lives of herself and the said [*husband*], and after the death of either of them, to allow the survivor to use and enjoy the same during his or her life, and after the decease of such survivor in trust," &c.

XIII. SETTLEMENT ON MARRIAGE OF FURNITURE.

to see to the preservation or to be answerable for the loss or destruction of the said furniture and effects, or any part thereof.

[*Power to appoint new trustees, Precedent I., clause* 20, ante, *p.* 353.]

IN WITNESS, &c.

THE SCHEDULE HEREINBEFORE REFERRED TO.

XIV. DECLARATION *of* TRUST (*by Supplemental Deed*) *of* STOCKS, *&c., added to* TRUST FUNDS *comprised in a* SETTLEMENT (*n*).

Parties.

THIS DEED (*o*), made the —— day of ——, 19—, BETWEEN [*settlor*], of, &c., of the one part, and [*trustee No.* 1], of &c. [*trustee No.* 2], of, &c., and [*trustee No.* 3], of, &c., of the other part, and supplemental to an indenture (hereinafter called "the principal indenture"), dated, &c., and made, &c., being a settlement made and executed in consideration of the then intended marriage, which was shortly afterwards solemnized between the said [*husband*] and [*wife*].

Recitals: of death of original trustee, and appointment of new trustee (*p*);

WHEREAS [*deceased trustee*] died on the —— day of ——, 19—, and by an indenture dated, &c., and made, &c., and indorsed on the principal indenture, in pursuance of a power contained in the same indenture, the said [*trustee No.* 3] was duly appointed to

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(*n*) In most cases where additions are made to trust funds, a mere memorandum not under seal according to the form given in the next precedent will be sufficient.

(*o*) Stamp, 1*l.* per 100*l.* or part of 100*l.* of the value of the property added to the trust funds as a voluntary disposition *inter vivos:* see Finance (1909-10) Act, 1910, s. 74. The value of the additional stocks, &c. must, for the purpose of stamp duty, be ascertained as at the date of the supplemental deed. The stamp must be adjudicated. Estate duty will be payable if the settlor dies within three years (see sect. 59 of the last-mentioned Act), but not settlement estate duty: *Att.-Gen.* v. *Milne,* [1914] W. N. 178. If the amount added is under 500*l.*, the lower rate of duty will be payable, but a statement as to value must be added: see Vol. I. "Conveyances," p. 360.

(*p*) As to the appointment of new trustees and procedure in connection, see T. A. 1925, s. 35; and in regard to settled land, the S. L. A. 1925, s. 35.

XIV. DECLARATION OF TRUST OF STOCK ADDED TO SETTLED FUNDS.

be a trustee in the place of the said [*deceased trustee*] for the purposes of the principal indenture, and the trust funds and property subject to the trusts of the principal indenture were, by the indenture now in recital or immediately after the execution thereof, duly assured and transferred to, or otherwise effectually vested in the said [*trustee No.* 3] jointly with the said [*trustees Nos.* 1 *and* 2] upon the trusts of the principal indenture.

of transfer by settlor of stocks, &c. to trustees.

AND WHEREAS the said [*settlor*] has transferred into the names of the said [*trustees*] the several stocks, funds, shares, and securities following, that is to say [*set out stocks*] [*or*, the several stocks, funds, shares, and securities, the particulars whereof are specified in the schedule hereto], to the intent that the same shall be held upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same.

Declaration that stocks, &c. transferred shall be held on trusts of settlement.

NOW THIS DEED WITNESSETH, and it is hereby agreed and declared, that the said [*trustees*], and the survivors or survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee of the principal indenture, shall stand possessed of the said several stocks, funds, shares, and securities so transferred to them as aforesaid, and the stocks, funds, shares, and securities for the time being representing the same and the income thereof, upon such trusts, and with and subject to such powers and provisions as are by and in the principal indenture declared and contained concerning the trust funds and property [*or,* the husband's fund] therein comprised and thereby settled, or such of the same trusts, powers, and provisions as are now or may henceforth be subsisting or capable of taking effect, but not so as to increase or multiply charges or powers of charging (*q*) to the intent that the said several stocks, funds, shares, and securities so transferred to the said [*trustees*] as aforesaid may form an addition to and be one fund with the trust funds and property [*or,* the husband's fund] originally settled by the principal indenture for all purposes, including (so far as that object can be effected hereby) the operation of the hotchpot clause therein contained.

IN WITNESS, &c.

[THE SCHEDULE ABOVE REFERRED TO.]

(*q*) As to multiplying powers of charging, see *Re Beaumont,* [1913] 1 Ch. 325.

XV. MEMORANDUM OF ADDITION TO TRUST FUNDS.

XV. MEMORANDUM (*to be* INDORSED *on a* SETTLEMENT) *of the* ADDITION *of a* SUM *of* STOCK *to the* TRUST FUNDS.

MEMORANDUM (*r*) that I, the within named [*settlor*], did, on the —— day of ——, 19—, transfer into the names of the within named [*trustees*] [*or*, of [*trustees*], the present trustees of the within written indenture], the sum of £——, —— Stock, to be held by the trustees or trustee for the time being of the within written indenture, upon the trusts by the same indenture declared concerning the trust funds [*or*, the wife's fund] thereby settled so far as the same trusts are still subsisting.

As WITNESS my hand this —— day of ——, 19—.

XVI. CONVEYANCE *of* FREEHOLDS *in* TRUST *for* SALE: *the* PROCEEDS *of* SALE *to be held upon* TRUSTS *declared by a* DEED *of even* DATE (*s*). POWERS *of* LEASING, *&c.*

Parties.

THIS CONVEYANCE (*t*), made the —— day of ——, BETWEEN [*intended husband*], of, &c., of the first part; [*intended wife*], of, &c., of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part: WITNESSETH as follows:—

In consideration of marriage.

1. In consideration of the marriage which is intended shortly

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(*r*) Stamp, 1*l.* per 100*l.* or part of 100*l.* of the value of the property added to the trust funds: see note (*o*) to last precedent.

(*s*) This mode of settling a small landed estate is the most convenient that can be adopted. The trust for sale will not be carried into effect unless it is found expedient to do so, and the effect of the settlement will, therefore, be the same as if the lands had been settled, as was sometimes formerly done, directly to uses for the benefit of the parties and their children, with a power of sale, except that the property is, by virtue of the trust for sale, at once converted into personalty.

(*t*) Stamp, 5*s.* per 100*l.* or part of 100*l.* of the value of the land. If, as is probable, it is intended to keep the settlement off the title, this deed should bear the full stamp, and the settlement a denoting stamp, so far as the freeholds are concerned. It would be as well to have the stamps adjudicated.

The various powers of management, leasing, &c. in the corresponding precedent in earlier editions are now omitted, as they are now vested in the trustees under sect. 28 of L. P. A. 1925.

XVI. CONVEYANCE OF FREEHOLDS IN TRUST FOR SALE.

to be solemnized between the said [*husband*] and [*wife*], the said [*husband*], with the approbation of the said [*wife*], hereby as settlor grants unto the said [*trustees*], ALL [*parcels*], TO HOLD the said hereditaments and premises unto the said [*trustees*] upon trust for the said [*husband*] until the said intended marriage, and thereafter upon trust that the said [*trustees*], or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall, with the consent in writing of the said [*husband*] and [*wife*], or of the survivor of them, during their, his, or her lives or life, and after the decease of the survivor of them, at the discretion of the trustees or trustee, sell the said hereditaments and premises, or any part thereof.

riage, settlor conveys freeholds, *Habendum*, upon trust for the husband until the marriage, and then upon trust for sale.

2. The trustees or trustee shall stand possessed of the net moneys arising from any such sale after payment thereout of the costs and expenses thereof, or otherwise incurred in respect of the premises [and the rents and profits of the said hereditaments, and every part thereof, until the same respectively shall be sold] (*u*), upon the trusts, and with and subject to the powers and provisions, declared and contained concerning the same respectively by and in a deed already prepared and intended to bear even date with, but to be executed immediately after the execution of these presents, and expressed to be made between the same parties as are parties hereto.

Declaration of trusts of proceeds of sale (*u*);

3. [The trustees or trustee shall pay the rents and profits of the said hereditaments and premises until the same respectively shall be sold, to the said [*husband*] during his life, and after his death to the said [*wife*] during her life [for her separate use, but so that she shall not during the said intended coverture have power to dispose of or charge such reversionary life interest by way of anticipation]; AND after the death of the survivor of them the said [*husband*] and [*wife*] shall stand possessed of the rents and

(*u*) The declaration of trusts as to rents and profits until sale in former editions of this work is now unnecessary: see sect. 28 (2) of the Law of Property Act, 1925, as, subject to any direction to the contrary in the disposition of trust for sale, they are to be applied in the same manner as the income of the investments representing the purchase-moneys. Clause 3 is, however, retained, as it can readily be adapted to a case where such a direction to the contrary is to be inserted.

XVI. CONVEYANCE OF FREEHOLDS IN TRUST FOR SALE.

profits of the said hereditaments and premises until the same shall be sold, upon such trusts and with and subject to such powers and provisions as are declared and contained concerning the same respectively by and in the said deed intended to bear even date herewith.]

Power to appoint new trustees.

4. The powers of appointing new trustees of these presents, as and when occasion shall arise, shall be vested in the said [*husband*] and [*wife*] jointly during their joint lives, and in the survivor of them during his or her life.

Restriction of liability under statutory covenant as "settlor" (*x*).

5. The said [*husband*], or any person deriving title under him, shall not be liable by reason of the covenant implied by the said [*husband*] having hereby conveyed as settlor to discharge or get in any incumbrance or estate not created by him or any such person.

6. [*Power to employ trustee agents* (*y*), *&c., as in Precedent I.*, ante, *p.* 353, *clause* 21.]

IN WITNESS, &c.

XVII. CONVEYANCE *on* MARRIAGE *of* FREEHOLDS, ENFRANCHISED FREEHOLDS *and* LEASEHOLDS *belonging to the* INTENDED HUSBAND, *upon* TRUST *for* SALE; POWER *to* SELL *for* FEE FARM RENTS. *Extensive* POWERS *of* PARTITION, EXCHANGE, ENFRANCHISEMENT, MANAGEMENT, LEASING, *&c.* (*z*).

THIS CONVEYANCE (*a*), made the —— day of ——, BETWEEN [*intended husband*], of, &c. (hereinafter called "the

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(*x*) See L. P. A. 1925, s. 76. It will be safer, where the title of the settlor has not been fully investigated, to qualify the settlor's implied covenant by inserting this clause, in case there should be any outstanding prior estate or incumbrance which has been overlooked.

(*y*) If it is desired that trustees may receive remuneration, clause 6 should be included, as T. A. 1925, s. 23, does not authorise the payment of trustees.

(*z*) If enfranchised copyholds are included in the conveyance and the enfranchisement has not been fully completed, this deed must be presented to the steward of the manor within six months for registration: see L. P. A. 1922, s. 129.

(*a*) Stamp, see note (*t*), p. 400.

husband "), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; [*trustee*], of, &c., [*trustee*], of, &c., and [*trustee*], of, &c., of the third part.

XVII. CONVEYANCE OF FREEHOLDS AND LEASEHOLDS ON TRUST FOR SALE, WITH EXTENSIVE POWERS.

WHEREAS a marriage is intended shortly to be solemnized between the husband and wife.

Recitals: of intended marriage;

AND WHEREAS the husband is seised of or entitled to the several messuages, lands, and hereditaments particularly described in the first part of the schedule hereto for an estate of inheritance in fee simple in possession [and of the lands which prior to the 1st day of January, 1926, were of copyhold tenure (which are now particularly described in the second part of the first schedule hereto), subject to the manorial incidents and other rights of the land, short particulars whereof are given in the same part of the same schedule]; AND is also possessed of or entitled to the several messuages and lands particularly described in the second schedule hereto for the residues of the several terms therein respectively created by the several leases which and the mesne assignments thereof respectively, are also mentioned in such last-mentioned schedule, and are therein set opposite to the properties to which such leases and assignments relate respectively, and at the yearly rents therein mentioned respectively.

of husband's title to lands described in schedules;

AND WHEREAS, upon the treaty for the said intended marriage it was agreed that the said freehold and leasehold premises should be assured unto the said trustees in manner hereinafter appearing upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same respectively:—

of agreement for conveyance on trust for sale.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement, and in consideration of the said intended marriage, the husband, with the approbation of the wife, hereby, as settlor, grants and conveys unto the said [*trustees*], ALL THAT the messuage or dwelling-house called ——, with the stables, outbuildings, gardens and pleasure-grounds thereto belonging, and the several manors, messuages or dwelling-houses, farms, lands and hereditaments situate in the parishes of —— and ——, in the county of ——, and particularly described in the first schedule hereto, To HOLD all the premises hereby granted unto the said [*trustees*] subject as to the premises described in the second part of the first schedule hereto to the manorial inci-

Grant of freeholds.

Parcels.

Habendum.

Upon trusts to be declared.

XVII. CONVEYANCE OF FREEHOLDS AND LEASEHOLDS ON TRUST FOR SALE, WITH EXTENSIVE POWERS.

dents affecting the same saved by Part V. of the Law of Property Act, 1922, and also to the rights preserved of the land[s] (if any) of the [respective] manor[s] by the 12th schedule to the same Act, upon trust for the said husband until the said intended marriage, and thereafter upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same.

Assignment of leaseholds.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the husband hereby, as settlor, assigns unto the said [*trustees*], ALL THOSE the several messuages and pieces or parcels of land situate in the parishes of —— and —— [aforesaid], particularly described in the second schedule hereto; TO HOLD all the premises hereby assigned unto the said [*trustees*] for the residues of the several terms therein respectively granted by the several indentures of lease which in the second schedule hereto are respectively set opposite to the properties to which the same respectively relate, subject to the several rents and covenants on the part of the lessee and to the conditions reserved by and contained in the said leases respectively, in trust for the husband, until the said intended marriage, and afterwards upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Habendum.

Declaration of trust for sale of lands assured.

3. IT IS HEREBY AGREED AND DECLARED that the said [*trustees*] shall, from and after the said intended marriage, stand seised and be possessed of the freehold and leasehold hereditaments and premises hereby granted and assigned respectively upon trust that the said [*trustees*], or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall, at the request in writing of the husband and wife, or the survivor of them, during their, his, or her lives or life, and after the death of such survivor at the discretion of the trustees or trustee, sell the said freehold and leasehold hereditaments and premises hereby granted and assigned respectively, or any part thereof respectively.

4. [*Declaration of trusts of proceeds of sale and of rents till sale, Precedent XVI., clause 2, p. 401, and note (u) at same page.*]

Power for trustees to allow *cestuis que trusts* to receive rents, &c. (*b*).

5. The trustees or trustee may, from time to time, during such period or periods, and upon such terms or conditions as they or he shall think fit, authorise and permit the husband or the wife, or

(*b*) This clause may be retained, but it is not necessary in view of sect. 29, L. P. A. 1925.

any other person or persons interested in or under the said indenture of even date herewith, to receive the rents and profits, and to exercise all the powers of management hereinbefore given to the trustees or trustee, without being accountable for any loss that may be occasioned thereby. XVII. CONVEYANCE OF FREEHOLDS AND LEASEHOLDS ON TRUST FOR SALE, WITH EXTENSIVE POWERS.

6. The statutory power of appointing a new trustee or new trustees hereof shall be vested in the husband and wife during their joint lives, and in the survivor of them during his or her life.

7. PROVIDED ALWAYS, and it is hereby agreed and declared, that the trustees or trustee shall not be responsible for the payment of any rents or in respect of the performance or observance of any covenants or conditions reserved by or contained in the said leases mentioned in the third schedule hereto, or any of them, or for or in respect of any damage, loss, costs, or expenses which may be caused or incurred by or by reason of the non-payment of any such rents, or the non-performance or non-observance of any of such covenants and conditions; AND that the trustees or trustee, and each of them, are entitled out of the trust estate to be reimbursed and indemnified in the fullest manner out of the trust against all costs, damages, losses, and expenses paid or incurred by them or him in respect of the said leasehold premises hereby assigned. Indemnity and reimbursement of trustees in respect of leaseholds.

8. [*Clause restricting implied covenant for further assurance if necessary, Precedent XVI., clause 5, p. 402.*]

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

XVIII. DECLARATION *of* TRUSTS *of* MONEY *to arise from the* SALE *of* FREEHOLDS *conveyed by* DEED *of even* DATE *for the* BENEFIT *of the* INTENDED HUSBAND *and* WIFE *and the* ISSUE *of the* MARRIAGE. COVENANT *to* SETTLE AFTER-ACQUIRED PROPERTY *of the* WIFE.

THIS TRUST DEED (*c*), made the —— day of ——, BETWEEN [*intended husband*], of, &c. (hereinafter called "the Parties.

(*c*) Stamp, see *ante*, p. 400, note (*t*).

XVIII. DECLARATION OF TRUSTS OF PROCEEDS OF SALE OF FREEHOLDS.

husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part: WHEREAS a marriage is intended shortly to be solemnized between the husband and wife.

Recitals: of intended marriage; of conveyance of lands in trust for sale;

AND WHEREAS, in pursuance and part-performance of an agreement entered into upon the treaty for the said intended marriage, the husband has by a deed bearing even date with, but executed before the execution of these presents, and made between the same parties as are parties hereto, assured and conveyed unto the said [*trustees*] certain freehold lands and hereditaments situate in the parish of ——, in the county of ——, and therein particularly described, to hold the same upon the trusts following, upon trust for the husband until the said intended marriage, and thereafter upon trust to sell the same as therein mentioned, and to stand possessed, from and after such sale, of the net moneys to arise therefrom, and [from and after the death of the survivor of them the husband and wife], of the rents and profits of the said hereditaments until the same should be sold, upon such trusts and subject to such powers and provisions as should be declared and contained concerning the same respectively by and in an indenture of even date therewith therein referred to, being these presents.

of agreement for settlement of wife's after-acquired property.

AND WHEREAS upon the treaty for the said intended marriage it was agreed that these presents should contain a covenant for settling any property of or to which the wife may be or become entitled at the time of such marriage or during the said intended coverture, except as hereinafter mentioned.

Declaration of trusts of proceeds of sale of lands;

NOW THIS DEED WITNESSETH that, in further pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

1. The said [*trustees*] shall stand possessed of the net moneys to arise from the sale under the trust for sale contained in the hereinbefore recited indenture of even date herewith of the said lands and hereditaments thereby assured, or any part thereof, upon trust that the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee") shall, with the consent in writing of the husband and wife during their joint lives, and of the survivor

trust for investment;

of them during his or her life, and after the death of such survivor, at the discretion of the trustees or trustee, invest the same net moneys, as and when the same shall be received, in the names or name of the trustees or trustee in or upon any of the stocks, funds, shares, or securities hereinafter authorised, and may from time to time, with such consent or at such discretion as aforesaid, vary or transpose any of the said investments into others of any nature hereby authorised.

trusts of income for husband for life, remainder for wife for life;

2. The trustees or trustee shall pay the income of the said trust moneys and the investments from time to time representing the same (hereinafter called "the trust premises") unto the husband during his life; AND after his death to the wife, if she shall survive him during her life, without power of anticipation.

trusts in favour of issue;

3. From and after the death of the survivor of them the husband and wife, the trustees or trustee shall stand possessed of the trust premises, and the income thereof, in trust, &c. [*usual trusts in favour of issue,* ut ante, *Precedent I., clause* 4, *p.* 338, *substituting* "the trust premises" *for* "the wife's fund"].

4. [*Hotchpot clause, Precedent I., clause* 5, *p.* 339.]

ultimate trust in default of children for husband absolutely.

5. If there shall be no child of the said intended marriage who, being a son, shall attain the age of twenty-one years, or being a daughter, shall attain that age or marry, then, subject to the trusts and powers hereinbefore declared and contained, or by law vested in the trustees or trustee, the trustees or trustee shall stand possessed of the trust premises and the income thereof, or so much thereof respectively as shall not have been paid or applied under any such trusts or powers, in trust [for the husband absolutely] (*c*).

(*c*) Unless it is desired to restrict the ultimate contingent trusts to the range of beneficiaries admitted under an intestacy by the A. E. A. 1925, the words in brackets should be omitted and the following substituted:—

"for such person or persons and for such purposes as the husband shall from time to time by any deeds, revocable or irrevocable, or by will or codicil appoint, and in default of and subject to any such appointment IN TRUST for such person or persons who, if the statutes of distribution of the effects of intestates in force on the 31st December, 1925, had remained unaffected, would have become entitled to the trust funds under the said statutes at the date of

XVIII. DECLARATION OF TRUSTS OF PROCEEDS OF SALE OF FREEHOLDS.

6. The wife hereby covenants, &c. [*continue covenant for settlement of after-acquired property, Precedent I., clause* 8, *p.* 342, *substituting* "the trust premises" *for* "the wife's fund"].

Covenant to settle wife's after-acquired property.

7. PROVIDED ALWAYS, that the wife shall take the first life interest, without power of anticipation, in the income of any property which shall become vested in the trustees or trustee under or by virtue of the covenant for settlement thereof hereinbefore contained, and that after her death the husband, if he shall survive her, shall be entitled to such income during his life, and that if there shall be no child of the said intended marriage who, being a son, shall attain the age of twenty-one years, or being a daughter, shall attain that age or marry, then, subject to the trusts and powers hereinbefore declared and contained, or by law vested in the trustees or trustee, the trustees or trustee shall stand possessed of any property which shall have become vested in them under or by virtue of such covenant, in trust, &c. [*ultimate trusts in favour of wife,* ut ante, *Precedent I., clause* 7, *p.* 340.]

Proviso as to income of after-acquired property.

Ultimate trusts of after-acquired property.

Power to raise moneys and advance the same to trustees of indenture of even date.

8. The trustees or trustee may, with such consent or at such discretion as aforesaid, raise by sale of all or any part of the trust premises, and advance to the trustees of the said indenture of even date herewith any moneys required by them for paying off any moneys secured or duties leviable in respect of the hereditaments by the said indenture assured, or for making any payments thereby or by statute directed or authorised. Any moneys so advanced to be repaid with interest at the rate of 4 per cent. per annum, and until payment to be charged on the hereditaments for the time being, subject to the trusts of the said last mentioned indenture; AND the said trustees or trustee advancing money under this power shall not be bound to inquire as to how much or if any money is required for the purposes aforesaid, or as to the application of the money advanced.

9. [*Investment clauses, Precedent I., clauses* 15 to 21, ante, *pp.* 348 et seq.]

10. [*Power to invest in the purchase of lands, Precedent V., clauses* 17 to 20, ante, *pp.* 367 et seq.]

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the death of the husband had he died possessed thereof intestate, such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes."

11. [*Power to appoint new trustees, Precedent I., clause* 20, *p.* 353.]

12. [*Power to employ agents and make charges, Precedent I., clause* 21, *p.* 353.]

IN WITNESS, &c.

XIX. TRUST INSTRUMENT *on* SETTLEMENT *on* MARRIAGE *of* REGISTERED LAND *on* TRUST *for* SALE. DECLARATION *of* TRUST *of* PROCEEDS *of* SALE.

THIS SETTLEMENT (*d*), made the —— day of ——, 19—, BETWEEN [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part.

WHEREAS a marriage is intended shortly to be solemnized between the husband and wife. Recitals of intended marriage.

AND WHEREAS the husband is seised for an estate in fee simple in possession free from incumbrances of the hereditaments hereby assured, of which he is registered as proprietor with a —— title under the Land Registration Act, 1925, and upon the treaty for the said marriage it was agreed that the said hereditaments should be settled in manner hereinafter appearing. Seisin of husband and agreement to settle.

AND WHEREAS an instrument of transfer to the said [*trustees*] of the said hereditaments ready for registration, under the said Acts, has been prepared and is intended to be forthwith executed; AND it is also intended that the said [*trustees*] shall be forthwith registered as proprietors of the said hereditaments (*e*). Intended transfer to and registration of trustees.

NOW THIS DEED WITNESSETH, and it is hereby agreed and declared as follows:—

1. In pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the husband, with the approbation of the wife, hereby as settlor grants unto the Grant.

(*d*) Stamp, *ad valorem* at 5*s.* per 100*l.* or portion of 100*l.* of the value of the land settled. The stamp should be adjudicated.

(*e*) Where registered land is conveyed to trustees upon trust for sale, the trustees, not the tenant for life, are registered as proprietors.

XIX. TRUST INSTRUMENT ON SETTLEMENT ON MARRIAGE.

said [*trustees*], ALL THOSE lands registered under the Land Registration Act, 1925, under the heading District ——, Parish ——, No. of Title ——, TO HOLD unto the said [*trustees*], in fee simple, upon trust for the husband until the said intended marriage, and after the solemnization thereof, upon the trusts and subject to the powers and provisions hereinafter contained concerning the same.

Covenant by the husband to execute transfer.

2. The husband hereby covenants with the said [*trustees*] that he will forthwith execute such instrument of transfer as aforesaid.

Covenant by trustees to apply for registration and enter restriction.

3. The said [*trustees*] hereby covenant with the husband and wife that they, the said [*trustees*] will forthwith, after such transfer is executed as aforesaid, apply for registration of themselves as proprietors of the said hereditaments, and for the entry of a restriction against the said Title No. ——, that no disposition shall be registered without the consent of the husband and wife (*f*).

Declaration of trusts, &c.

4. Upon such registration as aforesaid the said hereditaments shall go, remain, and stand limited upon the trusts, and subject to the powers and provisions to, upon, and subject to which the same would but for such registration have been held by virtue of these presents.

Trust for sale.

5. After the solemnization of the said intended marriage, the said [*trustees*] shall stand seised of the said hereditaments hereby granted upon trust, that they, the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee") shall, at the request or with the consent (*g*) in writing of the husband and wife, or the survivor of them, during their, his, or her lifetime, and after the death of such survivor, at the discretion of the trustees or trustee, sell the said hereditaments or any part thereof.

Trusts of the proceeds of sale.

6. The trustees or trustee shall, out of the moneys arising from any such sale, pay the costs incurred in respect thereof, or otherwise, in respect of the premises, and shall hold the residue of such moneys upon the trusts, and subject to the powers and provisions hereinafter declared and contained concerning the same.

Trust for investment.

7. The trustees or trustee shall, with the consent in writing of the husband and wife, during their joint lives, and of the sur-

(*f*) See L. R. R. 1925.

(*g*) These words seem advisable as the L. P. A. 1925, refers to "consents" of beneficiaries in connection with trusts for sale.

vivor of them during his or her life, and after the death of such survivor, at the discretion of the trustees or trustee, invest the said net moneys to arise from such sale as aforesaid in or upon any of the stocks, funds, shares, or securities hereinafter authorised, with power from time to time, with such consent or at such discretion as aforesaid, to vary or transpose any such investments into or for others of any nature hereby authorised.

8. The trustees or trustee shall pay the income of the said trust moneys and the investments from time to time representing the same (hereinafter called "the trust premises"), unto the husband during his life, and after his death to the wife, if she shall survive him, during her life, without power of anticipation.

9. From and after the death of the survivor of the husband and wife [*continue usual trusts for issue as husband and wife, or survivor, shall appoint, Precedent I., clause* 4, *p.* 338, *substituting* "trust premises" *for* "wife's fund"].

10. [*Hotchpot clause, Precedent I., clause* 5, *p.* 339.]

11. [*Ultimate trust for husband absolutely, Precedent XVIII., clause* 5, *p.* 407.]

12. [*Investment clauses, Precedent I., pp.* 348 et seq.]

13. [*Power to purchase land, Precedent V., clause* 15, *p.* 367.]

14. [*Power to appoint new trustees, Precedent XVI., clause* 4, *p.* 402.]

15. [*Power to employ agents and to charge, Precedent I., clause* 21, *p.* 353.]

IN WITNESS, &c.

XX. TRANSFER *of* MORTGAGE (*by* INDORSEMENT *on the* MORTGAGE DEED) *previously to* MARRIAGE, *upon* TRUSTS *which are* DECLARED *by a separate* DEED *of* SETTLEMENT.

THIS DEED OF TRANSFER (*h*), made the —— day of ——, 19—, BETWEEN [*intended wife and mortgagee*, of, &c., of the first Parties (*i*).

(*h*) Stamp, 6*d.* per 100*l.* or part of 100*l.* of the amount transferred.

(*i*) As to the advisability of obtaining the concurrence of the mortgagor, see *ante*, Mortgages, p. 145, note (*m*). If his concurrence cannot be obtained, this transfer must be modified accordingly.

XX. TRANSFER OF MORTGAGE ON MARRIAGE.

part; [*intended husband*], of, &c., of the second part; [*mortgagor*], of, &c., of the third part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the fourth part: WHEREAS a marriage is intended shortly to be solemnized between the said [*wife*] and the said [*husband*]; AND WHEREAS the within mentioned sum of £—— is still due and owing to the said [*wife*] upon the security of the within written indenture, but all interest for the same has been paid up to the —— day of —— last, as the said [*mortgagor*] and [*wife, &c.*] do hereby respectively acknowledge; AND WHEREAS on the treaty for the said intended marriage it was agreed, amongst other things, that the said principal sum of £——, and all interest due and to become due thereon, and the securities for the same, should be transferred unto the said [*trustees*] in manner hereinafter mentioned, upon and for the trusts and purposes, and with and subject to the powers, agreements, and declarations hereinafter declared or referred to concerning the same: NOW THIS DEED WITNESSETH as follows:—

Recitals: of intended marriage; that mortgage money is still owing; agreement to settle.

First *testatum*.

Assignment of mortgage moneys.

1. In pursuance of the said agreement, and in consideration of the said intended marriage, the said [*wife, &c.*], with the approbation of the said [*husband*], and also with the privity of the said [*mortgagor*] (testified by their respective execution hereof) hereby, as settlor, conveys and transfers to the said [*trustees*] the benefit of the said mortgage and the said principal sum of £—— secured thereby, To HOLD the same unto the said [*trustees*] in trust for the said [*wife*] until the said intended marriage; AND after the solemnization thereof, upon such trusts, and with and subject to such powers, agreements, and declarations as are or shall be expressed or declared concerning the same in settlement intended to bear even date herewith, and to be made between the said [*husband*], of the first part, the said [*wife, &c.*], of the second part, and the said [*trustees*], of the third part.

Habendum.

Trust for wife till marriage, then on trusts declared by deed of even date.

2. IT IS HEREBY AGREED that the statutory power of appointing a new trustee or new trustees of these presents shall be vested in the said [*husband*] and [*wife*] during their joint lives, and in the survivor of them during his or her life.

IN WITNESS, &c.

REAL SETTLEMENTS.

XXI. TRUST INSTRUMENT *on the* SETTLEMENT *on* MARRIAGE *of* FREEHOLDS *and* LEASEHOLDS *belonging to the* INTENDED HUSBAND; LIMITATION *of* RENTCHARGE *by way of* PIN-MONEY *to the* INTENDED WIFE; *and subject thereto* LIMITATION *of* LANDS *upon* TRUST *for the* HUSBAND *for* LIFE, *with remainder upon* TRUST *that the* WIFE *may receive a* JOINTURE, *and subject thereto to* TRUSTEES *for* 500 *years to secure* PORTIONS *for younger* CHILDREN, *with remainder upon* TRUST *for the* FIRST *and other* SONS *of the* MARRIAGE *successively in* TAIL MALE, *remainder to the* HUSBAND *in* FEE. TRUSTS *of* TERM *for securing* PORTIONS. POWERS *of* JOINTURING *and* CHARGING PORTIONS. SETTLEMENT *of* CHATTELS *as* HEIRLOOMS.

XXI. MARRIAGE SETTLEMENT OF HUSBAND'S FREEHOLDS, LEASEHOLDS, &c.

THIS TRUST INSTRUMENT (*k*), made the —— day of ——, 19—, BETWEEN [*intended husband*], of, &c. (hereinafter called "the settlor"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee*], of, &c., [*trustee*], of, &c., and [*trustee*], of, &c. (*l*) (hereinafter called "the trustees"), of the third part: WHEREAS a marriage is intended shortly to be solemnized between the settlor and wife; AND WHEREAS by a deed (hereinafter called the vesting deed) bearing even date with, but executed contemporaneously with these presents, and made between the same parties, and in the same

Parties.

Recitals: of intended marriage; of husband's title to freeholds; and leaseholds;

(*k*) Stamp, 5*s*. for every 100*l*. or portion of 100*l*. of the value of the properties settled.

(*l*) It is no longer necessary, as was formerly the practice, to appoint separate trustees of the "portions" or other terms created by the settlement. It may, however, be convenient to have two separate sets of trustees, as in the next form, in order to keep investments separate and to avoid conflicting interests being held by the same trustees. It is advisable to appoint not less than three general trustees of a real settlement, as otherwise, by the death or retirement of one, the number is at once reduced below that required by the S. L. A. 1925, ss. 94 and 101, to receive notice of the intended exercise by a tenant for life of his powers or to receive and give discharges for capital money arising under the Act.

XXI. MARRIAGE SETTLEMENT OF HUSBAND'S FREEHOLDS, LEASEHOLDS, &C.

order as these presents, certain lands and hereditaments situated at ——, in the county of ——, were vested in the settlor upon the trusts declared concerning the same by a trust instrument of even date therein referred to (meaning these presents) (*m*).

NOW THIS DEED WITNESSETH that, in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

Grant of freehold parcels.

Habendum.

In trust for husband till marriage.

1. The settlor hereby agrees that he will hold all the lands, hereditaments and property comprised in the vesting deed IN TRUST for himself until the solemnization of the said marriage, and thereafter upon the trusts following, that is to say:—

Limitation of rentcharge by way of pin-money.

2. Upon trust that the wife shall during the now intended coverture receive by way of pin-money the yearly sum of £——, to be charged upon and issuing out of the premises, to commence from the day of the solemnization of the said intended marriage, and to be considered as accruing from day to day, but to be paid without any deduction (*n*) by equal quarterly payments, on the usual quarter days, the first payment to be made on such of the said days as shall happen next after the said intended marriage, but so that she shall not have power to anticipate such yearly sum, or any part thereof; AND subject thereto, in trust for the settlor during his life without impeachment of waste; With remainder upon trust that the wife (if she shall survive the settlor) shall thenceforth during her life receive the yearly rentcharge of £—— for her jointure, to be charged upon and issuing out of the premises, to commence from the day of the death of the settlor, and to be considered as accruing from day to day, but to be paid without any deduction (*n*) by equal half-yearly payments on the

Remainder upon trust for husband for life.

Remainder upon trust that wife shall receive a jointure.

(*m*) See Vesting Deeds, Form 1.

(*n*) The words "without any deduction" will not make the rentcharge payable free of income tax, and it would seem that the limitation of a rentcharge by a deed of settlement on marriage cannot be made clear of income tax, as this would apparently be a void contract within sect. 103 of the stat. 5 & 6 Vict. c. 35: see *Floyer* v. *Bankes*, 9 Jur. (N. S.) 684; *Att.-Gen.* v. *Shield*, 3 H. & N. 834; *In re Gretton's Indenture*, [1923] 1 Ch. 77; *Brooke* v. *Price*, [1917] A. C. 115. As to the effect of these words, see *Re Parker Jervis*, [1898] 2 Ch. 643; *Re Maryon-Wilson*, [1900] 1 Ch. 565; *Re Coxwell*, [1910] 1 Ch. 63; *Earl of Egmont's Estate*, [1912] 1 Ch. 251.

25th day of March and the 29th day of September in every year, the first of such payments to be made on such of the said days as shall first happen after the death of the settlor, if the wife shall then be living; AND subject as aforesaid upon trust for the trustees for the term of 500 years from the death of the settlor without impeachment of waste, upon the trusts, and with and subject to the powers and provisions hereinafter contained concerning the same; AND subject as aforesaid, upon trust for the first and other sons of the settlor by the wife successively according to seniority in tail male; With remainder upon trust for the first and other sons of the husband by the wife successively according to seniority in tail; With remainder upon trust for all the daughters of the settlor by the wife in equal shares as tenants in common in tail; With cross-remainders between such daughters as to their original and accruing shares as tenants in common in tail: AND if there shall be but one such daughter, then, as to the entirety of the same premises, upon trust for such one daughter in tail; [With remainder upon trust for the settlor absolutely] (*o*).

Remainder upon trust for trustees for 500 years.

Remainder upon trust for first and other sons of the marriage in tail male.

Remainder upon trust for first and other sons in tail general.

2. The said hereditaments are hereby declared to be held upon trust by the trustees for the said term of 500 years upon the

Remainder upon trust for daughters as tenants in

(*o*) The words in brackets will restrict the devolution of the property in the contingency of the settlor's intestacy, under the ultimate trusts, to the comparatively few persons entitled under the A. E. A. 1925. See *ante*, Prec. XVIII. cl. 5, note (*c*), p. 407, and the suggested alternative form. If it is not desired that the property should be distributed among next of kin, the following form may be used after and subject to the general power of appointment conferred by the settlor on himself: see Prec. XVIII. note (*c*), *ubi sup.*, *i.e.*:—

[*and subject to any such appointment*] "upon trust for the person or persons who would, if the general law in force on the 31st December, 1925, had remained unaffected, have answered the description of the heir or heirs of the settlor in respect of his freehold land at the date of his death."

Unless these words are used, words in the old form of remainder over, to the grantor, or his heirs, or his right heirs, would not effect anything. They were not words of purchase or limitation in similar grants and do not appear to be within sects. 131 or 132 of the L. P. A. 1925: see Underhill & Strahan, "Interpretation of Wills and Settlements," Art. XXVIII., citing Co. Litt. 22b.

XXI. MARRIAGE SETTLEMENT OF HUSBAND'S FREEHOLDS, LEASEHOLDS, &C.

trusts, and with and subject to the powers and provisions following, that is to say:—

(1) If there shall be any younger child or children of the said intended marriage (that is to say, any child or children other than an eldest or only son, or any other son or sons, who, before his or their respectively attaining the age of twenty-one years, shall [or any daughter or daughters, who, before her or their attaining that age or marrying, shall] become, or, if of full age, would be indefeasibly, entitled either in possession or remainder to the said hereditaments for the first estate in tail [male], who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry), then the trustees and the survivors or survivor of them, or other the trustees or trustee for the time being of these presents, shall after the death of the settlor, or in his lifetime with his consent in writing, by mortgage of the premises comprised in the said term of 500 years, or any part thereof, for all or any part of the same term, or by or out of the rents and profits of the same premises, or any part thereof, or by sale of any timber or minerals, or by all or any of such means, or by any other reasonable means, raise for the portion or portions of such younger child or children as aforesaid such sum of money [free from death duties] as is hereinafter mentioned (that is to say), if there shall be but one such younger child the sum of £——; And if there shall be but two such younger children the sum of £——; And if there shall be three or more such younger children the sum of £——; and shall hold the said sum of £——, £——, or £——, as the event shall happen, in trust for all or such one or more exclusively of the other or others of the said younger children (*q*), if more than one in such

common in tail general with cross remainders (*p*).

Remainder upon trust for husband in fee.

Trust of term of 500 years for raising portions.

(*p*) If desired, the limitation may be to the daughters successively, as follows:—

"Upon trust for the first and every other daughter of the settlor by the wife successively in remainder one after the other according to their respective seniorities in tail male [*or*, in tail], with remainder upon trust for the settlor in fee simple."

(*q*) If desired, this provision may be extended to remoter issue, thus:—"or the issue of any such child or children, such issue to be born and take vested interests within twenty-one years after the death of the husband."

XXI. MARRIAGE SETTLEMENT OF HUSBAND'S FREEHOLDS, LEASEHOLDS, &C.

shares, and with such future, executory, or other trusts for the benefit of any such child or children (*r*), upon such conditions, and generally in such manner as the settlor shall, by any deed or deeds, revocable or irrevocable, or by will or codicil appoint; AND in default of such appointment, and so far as no such appointment shall extend, in trust for such younger child or children, if more than one, in equal shares.

Hotchpot clause.

(2) In default of appointment to the contrary, no child who (*s*) shall take any part of the said sum of £——, or £—— (as the case may be) under or by virtue of an appointment made under the power hereinbefore contained, shall be entitled to participate in the unappointed part of the same sum without bringing the part appointed to him or her (*t*) into hotchpot and accounting for the same accordingly.

Trusts for maintenance (*u*).

(3) The trustees shall, after the death of the settlor, by any such means as aforesaid, raise for the maintenance and education of the said younger child or children (*r*), such yearly sum or sums (not exceeding what the interest of the then expectant or presumptive portion or portions intended to be hereby provided for such child or children (*r*) would amount to at the rate of 4 per cent. per annum) as the settlor shall by any deed or deeds, revocable or irrevocable, or by will or codicil appoint, and in default of appointment and so far as no such appointment shall extend as the trustees shall think fit, and shall apply the yearly sum or sums so raised accordingly; AND the trustees may either themselves so pay and apply the same, or may pay the same to the guardian or guardians of such child (*r*) for the purposes aforesaid, without seeing to the application thereof.

Trust for advancement of younger children.

(4) The trustees may, at any time or times after the death of the settlor, or in his lifetime with his consent in writing, raise by the means aforesaid, or any of them, for the advancement of any such younger child or children (*r*), any sum or sums of money not exceeding in the whole for any such child or children (*r*) one moiety of his, her, or their then expectant or

(*r*) "Or remoter issue."
(*s*) "Or whose issue."
(*t*) "Or to his or her issue."
(*u*) This is not strictly necessary: see T. A. s. 31.

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presumptive or vested portion or portions, whether under any appointment or in default of appointment; and which sum or sums shall be considered as part of the portion or portions provided for such younger child or children (*x*), and shall pay and apply the same for his, her, or their preferment and advancement or benefit in such manner as the settlor shall direct, and in default of and subject to such direction as the trustees shall in their or his discretion think fit. In addition and without prejudice to the foregoing power, the trustees may exercise all or any of the powers conferred by sect. 32, sub-sect. (1) of the Trustee Act, 1925, in manner therein provided in all respects as if sub-sect. (2) of the same section had not been enacted, and the said sub-sect. (2) shall not apply for the purposes of these presents.

Power for the husband to require portions to be raised in his lifetime.

(5) The settlor may by deed require the trustees, at any time or times, to raise, by the ways and means aforesaid, the whole or any part or parts of the portion or portions to which, by appointment or otherwise, any child or children (*x*) of the intended marriage shall for the time being be entitled for a vested interest or vested interests, and to pay such portion or portions, or the part or parts thereof required to be raised as aforesaid, to the child or children (*x*) entitled thereto, or to any person or persons claiming through or in right of him, her, or them; and the trustees shall in all respects comply with every such request, and every such deed shall, if there shall be two or more younger children (*x*) of the intended marriage, and if it shall in other respects be necessary, operate as an execution of the power of appointment between or among such children (*x*) hereinbefore contained.

Power for trustees to create specific securities.

(6) In case of the settlor so as aforesaid requiring the whole or any part or parts of any portion or portions to be raised, the trustees may, instead of actually raising the same, assign or demise the premises, or any part or parts thereof, to the person or persons to whom the same shall be directed to be paid, or as he, she, or they shall direct, by way of mortgage for securing the sum or sums required to be raised, with interest for the same at such rate as shall be in such assignment or demise mentioned.

The husband to keep down

(7) In case of the settlor so as aforesaid requiring the whole or

(*x*) "Or remoter issue."

any part or parts of any portion or portions to be raised during his lifetime, then and in every such case the settlor shall, as between himself and the persons entitled in remainder (but without prejudice to the rights of the mortgagee or mortgagees) be bound to keep down the interest accruing during his life upon any money so raised in his lifetime.

the interest on portions raised in his lifetime.

(8) Subject to the trusts hereinbefore declared, and to the right of the trustees by the ways and means aforesaid, to raise and reimburse themselves all costs and expenses incurred in relation to the trusts aforesaid, the rents and profits of the premises comprised in the term of 500 years, or so much of the same rents and profits as shall from time to time remain after answering the trusts aforesaid, shall be received by the person or persons for the time being entitled to the same premises in reversion expectant upon the same term.

Surplus rents to be taken by reversioner.

3. It shall be lawful for the settlor if he shall marry again, by deed revocable or irrevocable, or by will or codicil, to appoint to any after-taken wife who may survive him, for her life, or for any less period by way of jointure, any yearly rentcharge or yearly rentcharges, not exceeding in the whole the yearly sum of £——, either subject to or free from death duties, to be charged upon all or any of the said hereditaments and to be paid at such times and in such manner as he shall direct; and this power of jointuring may be exercised as often as the settlor shall marry.

Power to husband to jointure any future wife.

4. It shall be lawful for the settlor if he shall marry again at any time or times, by deed revocable or irrevocable, or by will or codicil, to charge all or any of the said hereditaments and premises hereby settled with the payment of such sum or sums of money as he shall think fit, not exceeding in the whole in the several events hereinafter specified the several sums hereinafter mentioned, as and for the portion or portions of every or any child or children of his by any such after-taken wife who being a son or sons shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, that is to say, if there shall be only one such child the sum of £——, and if there shall be only two such children the sum of £——, and if there shall be three or

Power to charge estates with portions for children of a subsequent marriage (*z*).

(*z*) If desired, this power may be extended so as to include remoter issue: see *ante*, p. 417, notes (*r*), (*s*), (*t*).

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more such children the sum of £——, such portion or portions to be an interest or interests vested in and to be paid to or divided between or among such child or children, or any one or more of them, at such age or time, or respective ages or times (not previous as to a son to his attaining the age of twenty-one years, or as to a daughter to her attaining that age or marrying), and with such provisions for maintenance and advancement in the meantime, and, if more than one in such shares and proportions and with such conditions, restrictions, and limitations over, for the benefit of one or more such child or children respectively and in such manner as the settlor shall in the instruments creating the charge direct: And by the same or any other deed, or by will or codicil, to charge the hereditaments charged with such portion or portions respectively with the payment of such yearly sum or sums of money as he shall think fit, for or towards the maintenance and education of the child or children presumptively entitled to any portion or portions under the power of charging the same lastly hereinbefore contained, until his, her, or their portion or respective portions shall become vested and payable, but so that the same shall not exceed the interest of his, her, or their portion or respective portions or presumptive or expectant portion or respective portions after the rate of 4 per centum per annum; And also by the same or any other deed, or by will, or codicil, to charge all or any of the hereditaments and premises hereby settled with any sum or sums of money, not exceeding in the whole for any such child or children by any such after-taken wife as aforesaid one moiety of his, her, or their then expectant or presumptive portion or portions, and which sum or sums shall be considered as part of the portion or portions provided for such child or children, to be raised for the advancement or benefit of such child or children and to be applied for that purpose in such manner as the settlor shall direct, and in default of such direction, as the trustees shall in their discretion think fit; And by the same or any other deed, or by will or codicil, to appoint for any term or terms of years, to any person or persons with or without impeachment of waste, the said hereditaments so to be charged as aforesaid upon the usual trusts, for securing, raising, and paying such portion or respective portions, and the costs of and incident to raising the same and the execution of the trusts thereof.

Power to charge yearly sums for maintenance, &c. of such children;

to charge gross sums for advancement of such children;

to limit terms for securing portions.

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5. If any person who would, if of full age, be entitled to the possession or receipt of the rents and profits of the said hereditaments and premises as tenant for life, or in tail male, or in tail by purchase, shall die under the age of twenty-one years, then the rents and profits of the same hereditaments accrued during the minority of the person so dying, and all accumulations and investments thereof, or so much thereof as shall not have been applied under any statutory power, shall be invested and applied as if the same were capital moneys arising under the Settled Land Act, 1925, from the same premises, but (*a*) liable ultimately to be laid out in the purchase of real estate to be settled upon the trusts, and with and subject to the powers and provisions hereinbefore limited and declared concerning the said settled hereditaments and premises, but not so as to increase or multiply charges or powers of charging.

Proviso as to destination of accumulations of rents and profits.

Assignment of jewels, plate, &c.

6. For the consideration aforesaid, the settlor, as settlor, hereby assigns unto the trustees, ALL and singular the jewels, plate, furniture, pictures, statues, and other works of art, books, and other articles of domestic use and ornament now in or about —— Hall, aforesaid, To HOLD the same unto the trustees upon trust to permit the same to be held and enjoyed as heirlooms (*b*) by the person or persons for the time being entitled to the hereditaments hereby settled under the trusts and limitations hereinbefore declared as nearly as the rules of law and equity will permit, but not so as to increase or multiply charges or powers of charging: PROVIDED ALWAYS, that as soon as conveniently may be, after the execution of these presents, an inventory shall be taken of the jewels, plate, and other articles hereinbefore assigned as heirlooms, and such inventory (to be revised as occasion shall require) shall be signed by the person for the time being entitled to the use of the heirlooms and also by the trustees:

Habendum.

To trustees upon trust as heirlooms.

An inventory to be taken of the heirlooms.

(*a*) These words are inserted to obviate any doubt as to whether a mere direction that the moneys shall be held and applied as capital money arising under the Act would operate as an effectual conversion into land, so as to prevent the moneys from vesting absolutely in the first tenant in tail who attains twenty-one years: *Re Walker*, [1908] 2 Ch. 705; and *Re Twopeny's Settlement*, [1924] 2 Ch. 522.

(*b*) As to the power of a tenant for life to sell heirlooms, see S. L. A. 1925, s. 67; and see *Re Hope*, [1899] 2 Ch. 679; *Re Hope's S. E.*, 26 26 T. L. R. 413; *Re Sebright*, 56 Sol. J. 240.

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Heirlooms to be kept in good order and insured.

PROVIDED ALSO, that the said heirlooms shall at all times be kept in good preservation, and adequately insured against loss or damage by fire by the person for the time being entitled to the enjoyment thereof, but it is hereby expressly agreed and declared that the trustees shall not be bound to see to the preservation or insurance of the said heirlooms, or be responsible for any loss or injury which may happen thereto, but shall not be precluded from interfering for the protection thereof when and if he or they shall think fit.

Protection of purchasers and mortgagees.

7. No purchaser or mortgagee paying money on a sale or mortgage purporting to be made under any trust or power herein contained, or under any statutory power, shall be concerned to see that such money is required, or that no more than is required is raised, or as to the application thereof.

Appointment of trustees for purposes of Settled Land Act, 1925.

8. The trustees shall be the trustees or trustee of the settlement hereby created for all the purposes of the Settled Land Act, 1925.

Power to appoint new trustees.

9. The power of appointing a new trustee or new trustees of these presents shall be vested in the settlor during his life, and after his death be vested in the person, if of full age and otherwise competent, for the time being entitled in possession to the said lands and hereditaments, and if there shall be no such person, then in the person or persons in whom such power is vested by statute.

10. [*Trustees' power to employ agents and make charges, see ante,* p. 353.]

IN WITNESS, &c.

XXII. RESETTLEMENT *of* FREEHOLDS *by a* FATHER *and* ELDEST SON *on the* MARRIAGE *of the latter.* LIMITATION *of a* RENTCHARGE *to the intended* HUSBAND, *and of* JOINTURE RENTCHARGES *to the intended* WIFE. *Subject thereto to the* FATHER *for* LIFE, *remainder to the intended* HUSBAND *for* LIFE, *remainder* (*subject to a term for securing* PORTIONS) *to his* FIRST *and other* SONS *in* TAIL MALE, *with remainders comprising* LIMITATIONS *to the* HUSBAND'S *younger* BROTHERS *for* LIFE *and their respective* ISSUE *in* TAIL MALE; *with similar* LIMITATIONS *in* TAIL. NAME *and* ARMS CLAUSE. SHIFTING CLAUSE *carrying over* SETTLED LANDS *on* ACCESSION *to* TITLE *and* FAMILY ESTATES. POWERS *of* JOINTURING *and* CHARGING PORTIONS. APPOINTMENT *of* MONEYS, *&c. to follow* TRUSTS *of* FREEHOLDS.

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THIS DEED OF RESETTLEMENT (*c*), made the —— day of ——, 19—, BETWEEN [*father of intended husband*], of, &c., of the first part; [*intended husband*], of, &c. (hereinafter called "the husband"), of the second part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the third part; and [*trustee*], of, &c., [*trustee*], of, &c., and [*trustee*], of, &c., of the fourth part: WHEREAS a marriage is intended shortly to be solemnized between the husband and wife; AND WHEREAS by a vesting deed and trust instrument, both dated, &c., and made between [*parties*] (being a settlement made in consideration of the marriage then intended, and afterwards solemnized between the said [*father*] and [*mother*], who, being the father and mother of the husband, are hereinafter called "the father" and "the mother" respectively), the manors, lands, tithe rentcharges, and hereditaments described in the schedule to the said vesting deed were vested in the [*father*] upon trust for the father, until the solemnization of the then intended marriage, and thereafter upon trust for [*trustees of term for securing pin-money*] for the term of 99 years, upon the usual trusts for securing the yearly sum of £—— by way of pin-money for the mother, with remainder upon trust for

Parties.

Recitals: settlement on marriage of husband's parents;

(*c*) Stamp, *ad valorem* duty (*5s.* per 100*l.*) on the value of the lands, moneys, &c. to be settled; but see *ante*, p. 335, note (*c*).

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the father for his life without impeachment of waste, with remainder upon trust that the mother (if she should survive the father) should out of the same premises receive for her life a yearly rentcharge of £——, with the usual powers of distress and entry and other remedies for recovering payment of the rentcharge when in arrear, and, subject as aforesaid, upon trust for [*trustees of term for securing rentcharge*], for the term of 200 years, upon the trusts in the same trust instrument mentioned for securing the payment of the rentcharge; and, subject as aforesaid, upon trust for [*trustees of portions*], for the term of 1,000 years, upon the trusts in the same trust instrument mentioned for raising for the portion or portions of the child or children of the father by the mother (other than an eldest or only son), if there should be but one such child, the sum of £——, and if there should be more than one such child, the sum of £——, with provisions for the maintenance, education, and advancement of such child or children, with remainder to the use of the first and other sons of the father by the mother in tail male, with divers remainders over: AND in the trust instrument now in recital are contained powers of sale and exchange as therein mentioned, and it was thereby declared that the moneys to arise from any such sale should be laid out in the purchase of other lands and hereditaments to be settled upon the like trusts: AND WHEREAS since the date of the said trust instrument, from time to time, certain of the lands and hereditaments thereby settled have been sold and exchanged for other lands and hereditaments, and the proceeds of such sales and capital moneys received in respect of such exchanges have been from time to time laid out and invested partly in the purchase of other lands and hereditaments, which have been vested upon the trusts declared by the said trust instrument, and partly in the several stocks, funds, and securities hereinafter mentioned, which, or such of them as had not been previously laid out, were immediately before the execution of the disentailing deed hereinafter recited liable to be laid out in the purchase of lands and hereditaments, to be so vested as aforesaid: AND WHEREAS the several moneys, stocks, funds, and securities which now represent the proceeds of such sales and capital moneys as aforesaid respectively are specified in the schedule hereto: AND WHEREAS the husband is the first son of the father by the mother, and attained the age of twenty-one years on the —— day of ——, 19—, and

powers of sale, &c.;

sale and exchange of lands under powers in recited settlement;

lands now subject to the settlement;

state of family;

there have been issue of the father by the mother —— other children and no more, of whom ——, namely [*names*], have attained the age of twenty-one years, and the remaining ——, namely [*names*], are now infants and unmarried; AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the settled lands and hereditaments, and also the said moneys, stocks, funds, and securities, should be resettled to the uses, upon the trusts and in manner hereinafter appearing: AND WHEREAS, in pursuance and part performance of the said agreement, by a disentailing deed (hereinafter called "the disentailing deed") dated the —— day of ——, 19—, and made between the father, of the first part, the husband, of the second part, and [*trustee*], of the third part, the said settled lands and hereditaments, and all other (if any) the hereditaments subject to the subsisting trusts of the said trust instrument, now stand limited, subject to the estates and powers limited or declared by, and subsisting in the same premises by virtue of the said trust instrument, and which preceded the estate in tail male of the husband, other than the trust limited for the father for his life (*d*), and to the trusts and estates limited or to be limited in exercise of such powers, upon, with and subject to such trusts, powers, provisions, and declarations as the father and husband shall by deed appoint, and in default of such appointment, and so far as no such appointment shall extend, upon, with and subject to the trusts, powers, and declarations to which the premises would have stood limited, if the deed now in recital had not been executed; AND by the deed now in recital the said several moneys, stocks, funds, and securities specified in the said schedule hereto now stand limited, subject to the trusts aforesaid, which preceded the said estate in tail male of the husband, other than the trust declared for the father during his life, and to the trusts and estates declared or to be declared in exercise of such powers, upon the like trusts and subject to the like powers and provisions as were thereinbefore declared and contained concerning the hereditaments thereby assured, or as near thereto as circumstances would permit; AND WHEREAS the father

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agreement for marriage and resettlement;

disentailing assurance;

agreement for resettlement.

(*d*) These trusts include the limitations of pin-money and jointure rentcharge in favour of the intended husband's mother and of a term for securing portions for his younger brothers and sisters, so that there is no necessity to insert such trusts in the present settlement.

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and husband (*e*) have agreed to make such settlement as is hereinafter contained of the said manors, messuages, lands, hereditaments, moneys, stocks, funds, securities, and premises, and all other (if any) the hereditaments and premises which are now subject to the joint power of appointment contained in the disentailing deed.

Testatum. NOW THIS DEED WITNESSETH that, in pursuance of the said agreement, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

Appointment. Parcels. 1. In exercise of the power in this behalf given to them by the disentailing deed, and of every other power them hereunto enabling, they, the father and husband, as settlors, hereby appoint AND AGREE that all the said settled messuages, lands, and hereditaments, and all other (if any) the hereditaments which immediately before the execution of the disentailing deed were subject

To subsisting trusts until the marriage. to the then subsisting trusts of the hereinbefore recited trust instrument, shall immediately after the execution of these presents, subject to the estates and powers subsisting in the same premises by virtue of the said trust instrument, and which immediately preceded the estate in tail male of the husband other than the trust declared for the father for his life, and to the trusts declared or to be declared in exercise of such powers, remain and be, until the solemnization of the intended marriage, upon the trusts, with and subject to the powers and provisions to, upon, and subject to which the premises stood limited immediately before the execution of these presents; AND from and after the solemnization of the said intended marriage [upon such trusts, and with and subject to such powers and provisions as the father and husband shall from time to time by any deed or deeds revocable or irrevocable jointly appoint; AND in default of such appointment and so far as no such appointment shall extend] upon trust that the husband may, during the joint lives of himself and the father, receive the yearly rentcharge of £—— to be charged upon and

Afterwards, upon trust that intended husband may receive a rentcharge for his life.

(*e*) It is advisable that on a resettlement of real estate the son should be fully advised as to his position and rights under the original settlement. The rule that if the father derives any benefit for himself from the transaction the son should be *separately* advised, was re-affirmed by Cotton, L.J., in *Tucker* v. *Bennett*, 38 Ch. D. at p. 9; see also *Hoblyn* v. *Hoblyn*, 41 Ch. D. at p. 205.

issuing out of the settled premises, and to be payable by equal quarterly payments without any deduction (*f*) ["except for duty" *or* "free from all death duties"], the first of such payments to be made at the end of three calendar months of the intended marriage if the husband shall then be living; AND upon the further trust that if the husband shall die in the lifetime of the wife, she may from and after the death of the husband receive during her life the yearly rentcharge or rentcharges following (that is to say), if and so long as the father shall be living, the yearly rentcharge of £——, and after the death of the father the yearly rentcharge of £——, to be respectively charged upon and issuing out of the settled premises, and to be payable by equal quarterly payments without deduction [except for duty *or* free from all death duties], the first of such payments, as to the rentcharge of £——, to be made at the end of three calendar months after the death of the husband, if the wife and father shall then be living, and as to the rentcharge of £——, to be made at the end of three calendar months after the death of the survivor of them, the father and husband, if the wife shall then be living, but so that the wife shall not, during coverture, have power to dispose of or charge the said rentcharges respectively, by way of anticipation: AND, subject and charged as aforesaid, upon trust for the father for his life without impeachment of waste, in restoration and continuation of the former life estate of the father limited to him by the hereinbefore recited trust instrument (*g*); AND, after the decease of the father, upon trust for the husband for his life without impeachment of waste: AND, after the decease of the husband, upon trust for the said [*trustees*], for a term of 500 years, to commence from the death of the survivor of them, the father and husband, without impeachment of waste, upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same; AND from and after the determination of

And that the wife may receive rentcharges by way of jointure.

Remainder upon trust for father for life.

Remainder upon trust for intended husband for life.

Remainder upon trust for trustees for 500 years.

(*f*) As to the meaning of "without any deduction," see *ante*, p. 414, note (*n*).

(*g*) As to the effect of restoring the life estate of the father under the original settlement, see *Re Cornwallis-West and Munro*, [1903] 2 Ch. 150, explained in *Re Lord Wimborne and Browne*, [1904] 1 Ch. 537; see S. L. A. 1925, s. 22 (2); *Re Mundy and Roper*, [1899] 1 Ch. 275; *Parr* v. *A.-G.*, [1926] A. C. 239, overruling *Re Constable*, [1919] 1 Ch. 178.

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the same term, and in the meantime subject thereto, and to the trusts thereof, upon trust for the first and other sons of the husband successively according to seniority in tail male, with remainder upon trust for the first and other sons of the husband successively according to seniority in tail; with remainder upon trust for the first and other daughters of the husband successively according to seniority in tail; with remainder [*similar limitations upon trust for each of the living younger brothers of the husband successively*, nominatim, *for life and their issue in tail*]; with remainder upon trust for every son of the father hereafter to be born successively according to seniority in tail; with remainder [*limitations successively upon trust for living sisters of the husband for life and their issue in tail and of his after-born sisters in tail, with remainders upon trust for other collaterals and their issue*]; with remainder upon trust for the husband in fee simple.

Remainder upon trust for first and other sons of husband in tail male, and in tail;

further limitations in strict settlement (*h*).

2. Every person who after the determination of the life estate of the husband shall, under or by virtue of the trusts hereinbefore contained or of this proviso, become entitled beneficially to the possession or receipt of the rents and profits of the said manors, lands, and hereditaments hereinbefore settled as tenant for life, or tenant in tail male or in tail by purchase, and who shall not then use and bear the surname and arms of —— other than a married woman [and other than a person who would forfeit another estate by complying with this condition], shall within the space of one year next after he or she shall so become entitled, or (being an infant) within one year after he or she shall attain the age of twenty-one years, AND every person to whom any female so becoming entitled as aforesaid shall be married, or whom she shall afterwards marry, not being a peer or the eldest son of a peer, shall, within one year next after such female shall so become entitled or shall so marry, whichever of such events shall last happen (unless in the said respective cases any such person shall be prevented by death), take upon himself or herself and

Name and arms clause (*i*).

(*h*) The frame of strict settlements varies considerably, according to the wishes of the parties. In the present precedent the issue of the eldest son are exhausted before any limitations are inserted in favour of his younger brothers and sisters.

(*i*) As to name and arms clauses generally, see Vaizey, 1262; *Re Greenwood*, [1903] 1 Ch. 749; *Re Drax*, 75 L. J. Ch. 317.

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Penalty for neglect to assume name and arms.

use on all occasions the surname of —— either alone or in addition to his or her other surname (but so that the name of —— shall be the last and principal name (*k*), and shall assume the arms of —— either alone or quarterly with his or her family arms: AND shall within such one year apply for and endeavour to obtain a proper licence to take and use the surname of ——, and to assume and bear the arms of —— as aforesaid (*l*): AND in case any person who shall so become entitled as aforesaid, or such husband as aforesaid of any such person being a female, shall refuse or neglect (*m*) within such one year to take and use such surname, or to assume such arms, or to take such steps as aforesaid, or shall at any time afterwards discontinue to use such surname or to bear such arms [from any cause other than in order to avoid forfeiting another estate or by reason of his or her becoming a peer or peeress, or becoming entitled to use and using by courtesy the title of a peer or peeress], then and in every such case from and after the expiration of such one year, or immediately after such discontinuance as aforesaid (as the case may be), if the person who or whose husband shall so for the time being refuse, neglect, or discontinue as aforesaid, shall be a tenant for life, the trusts hereinbefore declared for such person during his or her life shall absolutely determine and be void; AND if the person who or whose husband shall so, for the time being, refuse, neglect, or discontinue as aforesaid, shall be tenant in tail male or in tail by purchase, then the trusts hereinbefore declared under which such person shall be so tenant in tail male or in tail, and in case of such person being tenant in tail male, then also the trusts hereinbefore declared for him in tail, shall absolutely determine and be void; AND in the said respective cases the manors, lands, and hereditaments hereby settled shall immediately go over in the same manner as if such person, being tenant for life, were actually dead, or, being tenant in tail male or in tail, were actually dead, and there was a general failure of his or her issue, without prejudice nevertheless to, but

(*k*) See *Re Eversley*, [1900] 1 Ch. 96.

(*l*) See, as to this, *Austen* v. *Collins* (1886), W. N. p. 91; and *Re Croxon*, [1904] 1 Ch. 252, where the condition failed because a licence could not be obtained. See also *Re Berens*, [1926] W. N. 37.

(*m*) As to the effect of the words "refuse or neglect" in the case of an infant, see *Re Edwards*, [1910] 1 Ch. 541.

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not so as to accelerate any jointure or jointures, portion or portions, sum or sums of money, lease or leases, sale or sales, exchange or exchanges, partition or partitions, or appointment or appointments of new trustees, which previously to such determination, shall have been charged, granted, or made under any of the powers for those purposes herein contained or given by any statute: PROVIDED ALWAYS, that the determination of the estate of any tenant for life by virtue of the proviso hereinbefore contained shall not exclude or prejudice any of the contingent remainders in trust hereinbefore declared for his or her sons and daughters respectively, or any other persons, but that so long as any such remainder shall be so contingently subsisting and capable of taking effect, the said manors, lands, and hereditaments hereby settled shall remain and be held during the remainder of the life of the tenant for life whose estate shall have so determined as aforesaid, upon trust, that immediately from and after such determination as aforesaid of such estate for life, and during the suspense and contingency of any such expectant remainders, the rents and profits of the premises shall be paid unto the person or persons for the time being entitled under or by virtue of the trusts hereinbefore declared to the then first vested estate in remainder expectant on the death of such person as aforesaid.

Contingent remainders not to be prejudiced.

Shifting clauses carrying over settled lands on accession to family title and estates with provisoes to meet the case of a previous exercise of the powers of jointuring or charging portions.

3. If at any time or times after the determination of the life estate in the hereditaments hereby settled hereinbefore limited to the father in restoration of his former life estate therein, the title and dignity of Earl of [A.], together with the [A.] family estates of Lord A., in the county of X., or any of them, or any lands, hereditaments, or other property, which may by any means have become substituted for the said family estates, or any of them (hereinafter called "the family estates"), or any part or parts thereof respectively (the same part or parts being at the least equal in value to the hereditaments hereby settled, after allowing for such incumbrances as may affect the same premises respectively), should, by any means whatsoever (*n*), come to or devolve upon any person hereby made tenant for life of the hereditaments

(*n*) If the shifting clause refers only to family estates irrespective of a title, insert here the words "except by means of a purchase for value." As to shifting clauses of this kind, see 3 Dav. Prec. 3rd ed. 349, 368 *et seq.*

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hereby settled, and, as to the said family estates, for an estate for his life, or any other estate of freehold, or inheritance in possession, or upon any person hereby made tenant in tail male or in tail by purchase of the hereditaments hereby settled, and as to the said family estates, for an estate in tail male, or any other estate of inheritance in possession, so that the person acquiring the said family estates, or such part or parts thereof as aforesaid, shall become actually entitled, or would, if of full age, be actually entitled in respect thereof to the possession or the receipt of the rents and profits or income thereof, then, and so often as the same shall happen, the trusts or estates for life, or in tail male or in tail (as the case may be), hereinbefore declared or appointed of or in the hereditaments hereby settled, to or for the benefit of the person acquiring as aforesaid the said title and family estates, or such part or parts thereof as aforesaid, and all powers annexed to the same trusts and estates respectively, but not any trusts, estates, and charges which shall have been limited, or created in exercise of such powers, or any of them (except as hereinafter is otherwise provided), or of any statutory power, shall absolutely cease and determine; And from and after such cesser or determination, the hereditaments hereby settled shall be held upon the trusts, and with and subject to the powers and provisions (but subject and without prejudice to the trusts and estates preceding the trusts or estates so ceasing or determining as aforesaid, and to the powers annexed to such preceding trusts and estates, and all trusts, estates, and charges which shall have been declared or created in exercise of such powers or any of them) to, upon, with, and subject to which the same hereditaments would have been held by virtue of these presents if such person so acquiring the said title and family estates or such part or parts thereof as aforesaid, being a tenant for life of the hereditaments hereby settled, were then dead, or, being a tenant in tail male or in tail thereof, were then dead without leaving any issue capable of inheriting under the trusts in tail male or in tail herein contained; save and except that, if, at the time when the said title and family estates shall come to or devolve upon any person hereby made tenant for life, there shall not be in existence any child of such person capable of taking the next vested estate in remainder under the trusts hereinbefore contained, then the cesser or determination of the estate of such person so directed to cease or determine as last afore-

Saving clause.

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Reverter clause.

said, shall, during the remainder of his life, or until the birth of such child, be suspended and shall not take place (*o*); PROVIDED that, if by virtue of the shifting clause hereinbefore contained, the ultimate trust of the hereditaments hereby settled in trust for the husband in fee simple would but for this present provision take effect in possession either absolutely or subject to any trusts or estates, or charges declared, limited, or created by these presents or by exercise of any powers hereby conferred, or of any statutory power, then and thereupon, the hereditaments hereby settled shall immediately revert and remain, upon the trusts, and with and subject to the powers and provisions, to, upon, with and subject to which the same hereditaments would have stood limited if the said shifting clause had not been herein contained: PROVIDED ALWAYS, that, if at the time when the said family estates, or such part or parts thereof as aforesaid, shall come to or devolve upon any person hereby made tenant for life as aforesaid, the power of jointuring hereinbefore contained, shall have been exercised by him in favour of any then existing wife, and the estate acquired by him in the said family estates, or such part or parts thereof as aforesaid, shall either be an estate of inheritance, or, being only an estate for life, shall be accompanied with a power of jointuring exerciseable in favour of the said then existing wife, to the full extent to which the said power of jointuring herein contained shall have been exercised in her favour, and so that she might derive the same benefit from an exercise of the power so acquired as from the grant, limitation, or appointment then already made under the said power of jointuring herein contained, then, and in every such case, the rentcharge, or rentcharges, which shall have been granted, limited, or appointed under the said power of jointuring herein contained, and all powers and remedies, and terms of years, which shall have been granted, limited, or appointed for securing the payment of the same, shall absolutely cease and determine; but, if the power of jointuring accompanying any such estate for life as aforesaid, shall not be exerciseable in favour of the then existing wife to the full extent to which the said power of jointuring herein contained shall have

Proviso to meet the case of a previous exercise of power of jointuring.

(*o*) See *Fazakerly* v. *Ford*, 4 Sim. 390. If preferred, a proviso similar to that at the end of the name and arms clause (*ante*, p. 428) may be substituted for this saving clause.

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been already exercised in her favour, and so that she might derive the same benefit from an exercise of the power so acquired as from the grant, limitation, or appointment then already made in her favour under the said power of jointuring herein contained, then, and in such case, the rentcharge, or rentcharges, which shall have been so granted, limited, or appointed in her favour as aforesaid, or the powers or remedies, or terms of years, which may have been granted, limited, or appointed, for securing the payment of the same, shall not cease or determine, but so much only of the same shall from time to time be raisable, or payable, for the benefit of the then existing wife, as, in addition to any rentcharge, or rentcharges, which may or might be granted, limited, or appointed in her favour, under the power of jointuring so acquired as aforesaid (if exercised to its full extent), would be sufficient to make up the full amount of the said rentcharge, or rentcharges, which shall have been so limited, granted, or appointed as aforesaid, under the said power of jointuring herein contained, and the residue thereof shall from time to time absolutely sink for the benefit of the person or persons for the time being entitled under the limitations hereinbefore contained to the possession or the receipt of the rents and profits of the hereditaments hereby settled; PROVIDED ALSO, that if at the time when the said family estates, or such part or parts thereof as aforesaid, shall come to or devolve on any person hereby made tenant for life, the power of charging with portions herein contained shall have been exercised by him in favour of any child or children whether born or unborn, and the estate acquired by him in the said family estates, or such part or parts thereof as aforesaid, shall either be an estate of inheritance, or being only an estate for life, shall be accompanied with a power of charging with portions, exerciseable in favour of the said child or children, to the full extent to which the said power of charging hereinbefore contained shall have been exercised in his, her, or their favour, and so that he, she, or they might derive the same benefit from an exercise of the power so acquired as from the charge or charges then already made under the said power of charging herein contained, then, and in every such case, the charge or charges which shall have been so made under the said power of charging herein contained (except as to any sum or sums of money, or interest which shall have been actually raised and paid),

Proviso to meet the case of a previous exercise of power of charging portions.

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and all powers and remedies, and terms of years, which shall have been limited or created for securing the payment thereof (but subject and without prejudice to any disposition or dispositions which shall have been actually made under the trusts of such term or terms), shall absolutely cease and determine; but, if the power of charging, accompanying any such estate for life as aforesaid, shall not be exerciseable in favour of the said child or children to the extent to which the said power of charging herein contained shall have been already exercised in his, her, or their favour, and so that he, she, or they respectively might derive the same benefit from an exercise of the power so acquired as under the charge already made in his, her, or their favour, under the said power of charging herein contained, then and in such case, the charge or charges which shall have been so made, or the powers or remedies, or terms of years, which shall have been limited or created for securing the payment thereof, shall not cease or determine, but so much only of the same charge or charges shall from time to time be raisable or payable for the benefit of such child or children respectively, as in addition to the charge or charges which may or might be charged in his, her, or their favour, under the power of charging so acquired as aforesaid (if exerciseable to its full extent), would be sufficient to make up the full amount of the charge or charges which shall have been so made as aforesaid under the said power of charging hereinbefore contained, and the residue of the same charge or charges shall absolutely sink for the benefit of the person or persons for the time being entitled under the limitations hereinbefore contained to the hereditaments hereby settled.

Trusts of portions term.

4. The said hereditaments are hereby declared to be held upon trust for the said [*trustees*], for the said term of 500 years, upon the trusts and with and subject to the powers and provisions following, that is to say:—

(i) If there shall be any younger child or children of the said now intended marriage (that is to say, any child or children other than an eldest or only son, or any other son or sons, who, before his or their respectively attaining the age of twenty-one years shall become, or if of full age would be indefeasibly, entitled either in possession or remainder by virtue of these presents to the said hereditaments for the first estate in tail male, or any daughter or daughters, who before her or their respectively attaining that age or marrying shall have become indefeasibly entitled either

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in possession or remainder under or by virtue of these presents to the said hereditaments for the first estate in tail) (*c*), who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees"), shall, after the death of the survivor of them, the father and husband, by mortgage of the hereditaments comprised in the said term of 500 years, or any part thereof, or by, or out of the rents and profits thereof, or by sale of any timber or minerals, or by all or any of such means, or by any other reasonable means raise for the portion or portions of such younger child or children as aforesaid, such sum of money as hereinafter mentioned, &c. [*continue trusts of term of 500 years for raising portions,* ante, *p.* 416, *to be paid (in default of appointment to the contrary) to the children on attaining twenty-one years or marriage,* "if the same respectively shall happen after the death of the survivor of the father and husband; but if the same respectively shall happen during their lives, or the life of such survivor, then immediately after the death of such survivor"].

(ii) In default of appointment, &c. [*hotchpot clause, p.* 417.]

(iii) The trustees shall, after the death of the survivor of them, the father and husband, &c. [*continue maintenance clause,* ante, *p.* 417.] Maintenance.

(iv) The trustees may, after the death of the husband, or in his lifetime, upon his written request (but during the lifetime of the father, with his consent in writing), raise, &c. [*continue advancement clause,* ante, *p.* 417.] Advancement.

(v) [*Power for* "the husband after the death of the father" *to require portions to be raised in his lifetime,* ante, *p.* 418.]

(vi) [*Power for trustees to create specific securities.*]

(vii) [*Husband to keep down interest on portions raised in his lifetime, p.* 418.]

(viii) [*Proviso that surplus rents shall be taken by reversioner, p.* 419.]

(*p*) This clause as to daughters should be inserted where, as in the text, the limitations in favour of the eldest son's daughters take precedence of those in favour of his younger brothers, &c.

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Power for the husband to jointure a future wife.

5. It shall be lawful for the husband if he shall survive the wife and marry again, at any time, by deed, revocable or irrevocable, or by will, or codicil, to appoint to any and every woman whom he may so subsequently marry (and that either before or after any and every such marriage) for her life, or for any less period, any yearly rentcharge or yearly rentcharges by way of jointure, not exceeding in the whole by the year the sum of £——, free from all deductions except for duty [*or*, "free of all death duties"] to be charged upon all or any of the hereditaments hereby settled, and to be paid at such times and in such manner as the husband shall direct, but so that no such payment shall be made during the life of the father without his consent in writing: AND this power of jointuring may be exercised as often as the husband shall marry.

Power for the husband to charge portions for children of a future marriage.

6. It shall be lawful for the husband if he shall so marry again as aforesaid by deed, revocable or irrevocable, or by will or codicil (but subject to the life interest of the father and to the said term of 500 years, and the trusts thereof), to charge all or any of the hereditaments hereby settled with the payment of such sum or sums of money as he shall think fit, not exceeding in the several events hereinafter specified the several sums hereinafter mentioned, for the portion or portions of the child or children of the husband by any after-taken wife, that is to say: If there shall be but one such child, the sum of £——, AND if there shall be but two such children, the sum of £——, AND if there shall be three or more such children, the sum of £—— [*continue power to charge estates with portions for children of subsequent marriage; power to charge* ("but subject as aforesaid") *yearly sums for maintenance, and sums for advancement, and to limit terms for securing portions*, ut ante, *p.* 420.]

Power for male tenant for life (other than father and intended husband) to jointure.

7. It shall be lawful for every male person hereby made tenant for life (other than the father and husband respectively), either before or after he shall become tenant for life in possession or entitled to the rents and profits of the hereditaments hereby settled (but subject to the trusts and estates preceding his estate, and to the powers annexed to such preceding trusts or estates, and to the trusts or estates declared or limited in exercise of such powers), by deed, revocable or irrevocable, or by will or codicil, to appoint to any woman whom he may marry for her life any yearly rentcharge by way of jointure, not exceeding the sum of £——, to

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be charged upon all or any of the hereditaments hereby settled and to be paid at such times, and in such manner, as the person exercising this power shall deem proper: AND this power of jointuring may be exercised as often as the person for the time being entitled to exercise the same shall marry: PROVIDED ALWAYS, that no jointure rentcharge appointed in exercise of the power lastly hereinbefore contained shall actually become a charge upon the hereditaments expressed to be charged therewith or be payable, unless the person who shall have exercised such power shall become tenant for life in possession of the hereditaments hereby settled, or unless some of his issue shall become entitled to the possession thereof, or would have become so entitled if of full age: PROVIDED ALSO, that the hereditaments hereby settled shall not, under the powers of jointuring hereinbefore contained, be at any one time subject to the payment of rentcharges exceeding in the whole the yearly sum of £——, such yearly sum to be inclusive of the rentcharge of £—— hereinbefore limited to the wife, and of any rentcharge which may be appointed in favour of any future wife of the husband, so that if by the exercise of the powers of jointuring hereinbefore contained the said hereditaments, or any part thereof, shall for the time being be charged with a greater yearly sum in the whole than £——, the rentcharge, or such part thereof, by the charge whereof such excess shall have been occasioned, shall, during the continuance of such excess, absolutely sink for the benefit of the person for the time being entitled under the trusts hereinbefore contained to the receipt of the rents and profits of the hereditaments hereby settled, and the rentcharges respectively shall have precedence according to the priority in order of limitation of the estates of the several persons exercising this power.

No jointure to be charged unless appointor or his issue become entitled in possession.

Estates not to be charged with more than a fixed yearly sum for jointures.

8. It shall be lawful for every male person hereby made tenant for life (other than the father and husband respectively), either before or after he shall become tenant for life in possession of, or entitled to the rents and profits of the hereditaments hereby settled (but subject to the trusts and estates preceding his estate and to the powers annexed to such preceding trust or estates, and to the trusts and estates declared or limited in exercise of such powers), by deed revocable or irrevocable, or by will or codicil, to charge all or any of the hereditaments hereby settled with the payment of any sum or sums of money for the portion or portions

Powers for tenants for life (other than father and intended husband) to charge portions.

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of the child or children (other than an eldest or only son, or a son who, by the death of an elder son or sons, shall be or become an eldest or only son) of the person for the time being exercising this power, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, not exceeding if there shall be but one such child (other than as aforesaid), the sum of £——, And if there shall be but two such children (other than as aforesaid), the sum of £——, And if there shall be three or more such children (other than as aforesaid), the sum of £——, to be payable to or amongst such child or children, or any one or more exclusively of the others or other of such children, at such times and in such manner in every respect, and if more than one in such shares, as the person for the time being exercising this power shall in manner aforesaid direct, And by the same or any other deed, or by will or codicil (but subject as aforesaid), to charge the premises charged with such portion or portions respectively with such yearly sum or sums, to commence from such time or times as the person for the time being exercising this power shall in manner aforesaid direct, for or towards the maintenance, &c. [*continue power to charge for maintenance*, ut ante, *p.* 417]: And also by the same or any other deed, &c. [*continue power to charge gross sums for advancement, and limit terms*, ut ante, *p.* 420]: Provided always, that the said hereditaments and premises hereby settled shall not under the powers of charging portions hereinbefore contained become ultimately liable or subject to the payment of any greater sum of money in the whole than the principal sum of £——, such principal sum to be inclusive of the sums of money hereby charged, or which may hereafter be charged, for the portions of children of the husband by the said wife, or by any future wife, so that if by the exercise of the aforesaid powers of charging portions or any of them the hereditaments hereby settled, or any part thereof, would, but for this present proviso, be charged with a greater sum in the whole than £——, the charge or charges creating such excess shall, during the continuance of such excess, not take effect as to the portion or portions to be thereby respectively charged, or as to such part thereof as shall form the excess, and charges for portions shall have precedence according to the priority in order of limitation of the estates of the several persons exercising this power.

Proviso that estates shall not be charged with more than a fixed sum for portions.

Extension of the powers of

9. [Notwithstanding anything contained in the Settled Land

Act, 1925, or any Acts for the time being in force relating to settled lands, the tenant for life in possession or other person or persons having for the time being under the Settled Land Act the powers of a tenant for life in relation to the hereditaments hereby settled (hereinafter called "the tenant for life"), may in addition to or in extension of the powers and provisions of the Settled Land Act exercise any of the following powers in like manner as if they had been conferred by or contained in the said Acts, that is to say:—

a tenant for life under S. L. A. (*q*).

(i) May exercise any of the powers conferred on him by any of the Settled Land Act or by these presents in extension thereof, without previous notice of his intention to exercise any such power to any trustee, or to the solicitor of any trustee, and without the leave of the Court.

Notices to trustees of settlement, &c. dispensed with (*r*).

(ii) May grant a mining lease, whether the mines or minerals leased are already opened and in work or not, so that no part of

Mining rents not to be capitalised (*s*).

(*q*) Any limitation of the powers of a tenant for life under the S. L. Acts is void under sect. 106 of the S. L. A. 1925, but the settlement may be so framed as to avoid there being a tenant for life under the Act. Additional or larger powers may be conferred on a tenant for life under sect. 109 of the S. L. A. 1925, and there must be set out in the trust instrument either expressly or by reference: sect. 4 (3) (d), S. L. A. 1925. No question arises where the settlement is created by the procedure in sects. 4 and 5 of that Act, as in such cases the additional powers must also be set out in the vesting deed. Where, however, as in this Precedent, the lands have been already settled, and the vesting deed vesting the legal estate in the first tenant for life has been executed, it seems doubtful whether any additional or larger powers introduced into the resettlement, and which had not been set out in the vesting deed, would be effective as long as the trustees of the settlement were undischarged, inasmuch as sect. 18 (1) invalidates dispositions by a tenant for life other than those authorised by the Act or any other statute, "or made in pursuance of any additional or larger powers *mentioned in the vesting instrument*." There appears to be no provision in the Act for a supplemental vesting deed containing these further powers, or for making any addition to a vesting deed.

(*r*) See, as to notice of intention to exercise the statutory powers, sect. 101 of the S. L. A. 1925.

(*s*) See, as to the capitalisation of mining rents, sect. 47 of the Act of 1925. The statutory restriction in this respect is often found to be inconvenient. As to the distinction between opened and unopened mines, see *Re Maynard's S. E.*, [1899] 2 Ch. 347; *Greville Nugent* v. *Mackenzie*, [1900] A. C. 83; *Re Chaytor*, [1900] 2 Ch. 804; *Re Baskerville*, [1910] 2 Ch. 329.

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the rent shall at any time be set aside as capital money arising under the Settled Land Act, but the whole of such rent shall go as rents and profits.

Power to make long leases, and fee farm grants.

(iii) May grant any lease of the hereditaments hereby settled, or any part thereof, or of any easement, right, or privilege of any kind over or in relation to the same for any purpose whatever, whether involving waste or not, for any term not exceeding, in case of a building lease (as defined by the Settled Land Act, 1925 [9999] years, in case of a mining lease [200] years, and in case of any other lease [100] years; AND grants may be made of the said lands, or any part thereof, in consideration of rents in perpetuity, either by way of rentcharge, or secured by a condition of re-entry on non-payment thereof or otherwise as the tenant for life shall think proper or expedient.

Power for tenants for life to sell or lease principal mansion-house, park, &c. without consent (*t*).

(iv) [May sell or lease the principal mansion-house on the land hereby settled and the demesnes thereof, and other lands usually occupied therewith, without the consent of the trustees or an order of the Court.]

Power to sell for building purposes.

(v) May sell the hereditaments hereby settled, or any part thereof, to any person or persons or corporation for building purposes, as defined by the Settled Land Act, 1925 (*u*), with such powers, easements, and rights, and subject to such exceptions, reservations, restrictions, covenants, and conditions as the tenant for life shall think expedient in consideration, wholly or partially, of a freehold rentcharge to be payable, secured, and limited in like manner as in the last preceding sub-clause is provided with respect to the freehold rentcharge therein referred to; but so that on any such sale the rent to be reserved shall be the best that can reasonably be obtained, having regard to any fine or premium which may be taken, save that a peppercorn or other nominal rent may be made payable for any period not exceeding the first five years; AND that every purchaser shall execute a duplicate or counterpart of the conveyance, and shall thereby covenant for the due payment of the rent thereby reserved: PROVIDED that any fine

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(*t*) This clause is not necessary: see as to the restrictions with regard to sales and leases of the principal mansion-house, &c., sect. 65 of the Act of 1925, but it is inserted in view of the practice under the earlier Acts.

(*u*) S. L. A. 1925, s. 117.

or premium taken upon any such sale shall be paid to the trustees, and applied as capital moneys.

Extension of powers to exchange and purchase lands.

(vi) May purchase land in Scotland or Northern or Southern Ireland, and may exchange any part or parts of the hereditaments hereby settled, situate in England or Wales, for land in Scotland or Southern or Northern Ireland.

Power to purchase or acquire easements, &c.

(vii) May purchase or acquire any easement, right, or privilege, or the benefit of any restrictive covenant in connection with or for the benefit of the hereditaments hereby settled, or any part thereof, for such consideration in money or otherwise, and upon such terms as the tenant for life shall think fit.

Power to raise money on mortgage (*v*).

(viii) May raise on mortgage of the settled lands, or any part thereof, all or any moneys which may be raisable under the trusts of any term hereby limited or charged under any power hereby given or required for the purpose of any purchase or acquisition hereby or by statute authorised or directed to be made, or for the payment of any estate duty, succession duty, or for any purpose for which capital moneys are hereby or by statute authorised to be expended, such moneys to be paid to the trustees of the settlement, and may secure the repayment of the moneys so raised, with interest at such rate as the tenant for life shall think proper, by a legal mortgage, with such powers and provisions, and upon such terms as the tenant for life may think proper; And no mortgagee paying or advancing money on any mortgage, purporting to be made under this clause, shall be concerned to see that such or so much money is required, or as to the application of the moneys so raised.

Power to release easements and covenants.

(ix) May release any easement or privilege, or the benefit of any covenant over or in respect of any of the hereditaments hereby settled, either without any consideration, or for such consideration in money or otherwise, and generally upon such terms as the tenant for life may think fit (*x*).

Power to refer matters to arbitration.

(x) May refer to arbitration—

(a) The amount to be paid or received on any purchase or sale, or for equality of exchange or partition.

(*v*) As to statutory powers, see S. L. A. 1925, s. 71.

(*x*) See S. L. A. 1925, s. 58 (1) and (2). As to exchanging a release of an easement over other land for a release of an easement over the settled land, see *Re Brotherton*, [1907] W. N. 230; [1908] W. N. 56; 77 L. J. 58, 373.

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(b) The rent to be reserved on granting a lease or tenancy agreement (whether to or by the tenant for life), and the covenants and provisions to be contained in such lease or tenancy agreement.

(c) The terms of the surrender of a lease or tenancy.

(d) All disputes between a tenant and the reversioner, whether the tenant for life be or be not the tenant.

Capital moneys. Investment and application—Extension of powers of S. L. A. (*x*).

10. Capital money arising under the Settled Land Act, 1925, may, in addition to the modes of investment or application thereof authorised by the same Act, be invested or applied in any of the following ways:—

(i) Investment in or upon any of the stocks, funds, or securities mentioned in clause 12 hereof, and with and subject to the powers and provisions of clauses 13 to 17 hereof.

(ii) The payment of any money paid for purchase-money upon any purchase which may be made under any power in that behalf given by sub-clauses (v) and (vii) of clause 9 hereof.

(iii) The discharge, purchase, or redemption of any rentcharge (whether temporary or perpetual) charged upon the hereditaments hereby settled, or any part thereof, and created in pursuance of any Act of Parliament, with the object of paying off any moneys advanced for the purpose of defraying the expenses of any permanent improvement, whether of a kind authorised by the Settled Land Act or by these presents or not.

Appointment of moneys, stocks, funds, and securities, representing proceeds of sale, &c., to follow trusts of freeholds.

11. In pursuance of the said agreement in this behalf, and for the consideration aforesaid, and in further exercise of the power in this behalf given to them by the disentailing deed, and of every other power them hereunto enabling, the father and husband hereby appoint that all the moneys, stocks, funds, and securities specified in the said second schedule hereto, and all other (if any) the moneys, stocks, funds, and securities which immediately before the execution of such last-mentioned deed were subject to the trusts of the hereinbefore recited trust instrument immediately after the execution of these presents and so soon as the same premises respectively shall have been paid to or transferred unto or into the names of the said [*trustees*], subject to the then sub-

(*x*) See sect. 73, S. L. A. 1925.

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sisting limitations, powers, and provisions of the hereinbefore recited trust instrument, and which immediately preceded the estate in tail male of the husband thereby limited, other than the trust declared for the father for his life, and to the trusts and estates limited or to be limited in exercise of any such powers, be held by and vested in the said [*trustees*] until the solemnization of the said intended marriage, upon the trusts, and with and subject to the powers and provisions to which the same premises stood limited immediately before the execution of these presents; AND, from and after the solemnization of the said intended marriage, upon trust that the trustees shall convert into money such of the premises lastly hereby appointed as shall not consist of money, and lay out the moneys arising from such conversion, and such portion of the same premises as shall consist of money, in the purchase of freehold hereditaments in England or Wales, to be conveyed and settled, upon the like trusts, and with and subject to the like powers and provisions as are hereinbefore limited, declared, and contained respectively concerning the hereditaments hereby settled, and to hold, invest, and apply the said moneys and premises lastly hereby appointed until the same shall be so laid out, as if the same were capital moneys arising under the Settled Land Act, 1925, but so that no such conversion, purchase, investment, or application as aforesaid shall be made without the consent of the tenant for life (as hereinbefore defined).

to subsisting trusts till marriage;

afterwards, upon trust for purchase of lands to be settled;

and meanwhile to hold moneys, &c. as capital moneys under S. L. Act (*y*).

12. The trustees may, with the consent in writing of the tenant for life (as hereinbefore defined), invest any moneys in their hands requiring or being applicable for investment hereunder in their names in or upon, &c. [*see* ante, *p.* 348, *clause* 15].

Investment.

13—17. [*Add clauses* 16 *to* 18, ante, *p.* 352.]

18. The trustees shall be trustees of the settlement hereby made for the purposes of the Settled Land Act, 1925.

Appointment of trustees for purposes of S. L. Act.

19. The statutory power of appointing a new trustee or new trustees of these presents shall be vested in and exerciseable by the father and husband during their joint lives and the survivor

Power to appoint new trustees of

(*y*) As to investment and application of capital money, see sects. 73, 75, 87 and 3rd Schedule, S. L. A. 1925.

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of them during his life, and after the death of such survivor in and by the tenant for life as hereinbefore in clause 9 defined.

20. [*Power for trustees to employ agents and make charges*, ante, *p.* 353, *clause* 21.]

term, and new trustees of settlement.

In witness, &c.

The Schedule above referred to.

XXIII. SETTLEMENT *on* Marriage *by a* Tenant *for* Life *in* Possession *of* Estates *settled in* Strict Settlement, Charging *his* Life Estate *with* Pin-Money *in favour of the* Intended Wife, *and exercising his* Power *of* Charging *a* Jointure *for her, and* Portions *for younger* Children.

Parties.

THIS DEED (*z*), made the —— day of ——, 19—, Between [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustee of term*], of, &c., and [*trustee of term*], of, &c., of the third part: Whereas a marriage is intended shortly to be solemnized between the husband and the wife: And whereas by a vesting deed dated the —— day of ——, and made between —— and [*the husband*], of the —— part, certain hereditaments situate at ——, in the county of ——, were vested in [*the husband*] upon the trusts declared concerning the same by a trust instrument dated, &c., and made, &c. [*or*, "created created by the will of [*testator*], late of ——, deceased, dated, &c., and proved," &c.], whereby the said hereditaments, subject as therein is mentioned, settled upon trust for the husband for his life [*or, if the husband was not the first tenant for life under the*

Recitals (*a*): of intended marriage; of original settlement;

Stamps.

(*z*) It would seem that this settlement should bear three stamps of 10*s.* each, but the stamps must be adjudicated.

(*a*) If the strict settlement is created by deed this settlement may be expressed to be supplemental thereto, as follows:—

"And supplemental to a trust instrument of settlement dated, &c., and made, &c. (hereinafter called 'the instrument')."

After this statement the recital of the intended marriage will be inserted.

XXIII. MARRIAGE SETTLEMENT CHARGING JOINTURE AND PORTIONS UNDER POWER IN STRICT SETTLEMENT.

settlement, "upon trusts under which the husband is now tenant for life in possession of the same hereditaments"], with divers remainders over; AND in the said trust instrument now in recital was contained, &c. [*recite fully the powers of jointuring and charging portions*]; AND WHEREAS some of the hereditaments, subject to the said trusts, have been sold under the powers in that behalf therein contained or conferred by statute, and some of the proceeds of sale have been from time to time invested in the purchase of other hereditaments which have been conveyed or assured upon the trusts of the same trust instrument, and the remainder of such proceeds of sale have been invested in and are now represented by the several stocks, funds, and securities following, that is to say [*describe them*], all of which are now standing in the names of [*general trustees*], as the trustees of the said trust instrument: AND WHEREAS upon the treaty for the said marriage it was agreed that the husband should make such provision as is hereinafter contained for the wife and his younger children by her in manner hereinafter appearing.

of sales of settled lands;

of agreement for provision of jointure and portions.

NOW THIS DEED WITNESSETH that, in pursuance of the said agreement, and in consideration of the said intended marriage, it is hereby agreed and declared as follows:—

1. The husband, as settlor, with the approbation of the wife, hereby agrees that he will hold ALL and singular (*b*) the lands and hereditaments of freehold tenure now comprised in the vesting deed and subject to the subsisting trusts of the hereinbefore recited trust instrument [*or,* "will"], upon trust that, if the said intended marriage shall be solemnized, the wife shall, during the now intended coverture, receive by way of pin-money the yearly sum of £——, to be charged upon and issuing out of the hereditaments and premises hereby granted, to commence from the day of the solemnization of the said intended marriage, and to be considered as accruing from day to day, but to be paid without any deduction (*c*) by equal quarterly payments, on the usual quarter days,

Trusts of freeholds during joint lives of husband and wife to secure pin-money.

Creation of rentcharge by way of pin-money.

(*b*) If only part of the settled hereditaments are to be charged, say, "ALL and singular the messuages, lands, and hereditaments particularly described in the schedule hereto, being part of the hereditaments now subject to the trusts of the trust instrument, &c."

(*c*) See *ante,* p. 414, note (*n*).

XXIII. MARRIAGE SETTLEMENT CHARGING JOINTURE AND PORTIONS UNDER POWER IN STRICT SETTLEMENT.

the first payment to be made on such of the said days as shall happen next after the said intended marriage, but so that she shall not have power to anticipate such yearly sum or any part thereof; AND subject and charged as aforesaid, upon trust for the husband for his life without impeachment of waste.

Charge of jointure.

2. In exercise of the said power in this behalf vested in him by the said trust instrument: AND of every or any other power him hereunto enabling, the husband, as settlor, hereby appoints and agrees that the wife, during her life, if the said marriage shall be solemnized, and she shall survive the husband, shall receive a yearly rentcharge of £—— by way of jointure to be charged upon and issuing out of the hereditaments now subject to the trusts of the trust instrument (*d*) to be considered as accruing from day to day but to be paid to the wife by equal half-yearly payments without any deduction (*e*) [except duty (*f*)] [*or*, "free from all death duties"] on the —— day of —— and the —— day of —— in every year, the first half-yearly payment thereof to be made on such of the said days as shall first happen after the death of the husband.

Charge of portions.

3. In exercise, &c. (*ut supra*), the husband, as settlor, hereby charges ALL and singular the said hereditaments and premises (*g*), subject and without prejudice to the rentcharges of £—— and £—— hereinbefore charged thereon as aforesaid respectively, and to all powers and remedies for securing payment of the same or either of them, with the payment to the younger child or children (if any) of the said intended marriage (that is to say, any child or children other than an eldest or other son or sons who, upon his or their respectively attaining the age of twenty-one years, shall become entitled either in possession or remainder under or by virtue of the trust instrument, to the hereditaments thereby settled for the first estate in tail male) who, being a son or sons, shall attain the age of twenty-one years, or, being a

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(*d*) If only part of the settled hereditaments are to be charged, say, "the said hereditaments hereinbefore mentioned and charged."

(*e*) As to these words, see *ante*, p. 414, note (*n*).

(*f*) The question whether the portions and jointure can be given free of duty will depend on the power.

(*g*) See note (*d*), above.

daughter or daughters, shall attain that age or marry, of such sum of money as hereinafter mentioned (that is to say) if there shall be but one such younger child the sum of £——; And if there shall be but two such younger children the sum of £——; And if there shall be three or more such younger children the sum of £——; the said sum of £—— or £—— or £——, as the event may happen, to be raised by the said [*trustees*] or the survivor of them, or other the trustees or trustee of these presents (hereinafter called "the trustees") after the death of the husband, or in his lifetime, with his consent in writing, by such ways and means as are hereinafter mentioned, and to be held by the trustees in trust for all or such one or more exclusively of the others or other of the said younger children, &c. [*continue provisions for younger children as the husband shall appoint and in default of appointment for them equally at twenty-one or marriage,* ante, *p.* 416; *hotchpot clause,* ibid., *prefacing the clause with the words* "And the husband hereby further appoints that"]; And the husband further appoints that the trustees shall, after the death of the husband, by any such means as aforesaid, raise, but subject and without prejudice as aforesaid, such yearly sum of money as shall be equal to interest at the rate of 4 per cent. per annum on the expectant portion or portions of such younger child or children, clear of all deductions except succession duty, to commence from the death of the husband, and to be applied by the trustees in their discretion for the maintenance and education of the child or children of the said intended marriage for whom a portion or portions are intended to be hereby provided: And the husband further appoints that the trustees may, &c. [*continue advancement clause,* ut ante, *p.* 417].

Limitation of term to secure portions (*h*).

4. In exercise, &c. [*ut supra*], the husband, as settlor, hereby appoints and agrees that he will hold All and singular the hereditaments and premises charged with the said portion moneys as aforesaid upon trust for the said [*trustees*], for the term of 1,000 years to commence from the death of the husband without impeachment of waste, but subject to the said jointure rentcharge and to the powers, remedies, and trusts under these presents or by law provided for securing payment of the same

(*h*) It is not now generally necessary to limit a term to secure a jointure rentcharge: see sect. 121, L. P. A. 1925.

XXIII. MARRIAGE SETTLEMENT CHARGING JOINTURE AND PORTIONS UNDER POWER IN STRICT SETTLEMENT.

upon trust that the trustees shall by mortgage of the same premises, or any part thereof, for all or any part of the said term, or by or out of the rents and profits of the same premises, or any part thereof, or by sale of any timber or minerals, or by any other reasonable means, raise the said sum of £——, £——, or £——, as the case may be, or so much thereof respectively as shall become raisable, with such interest and maintenance moneys as aforesaid, and such sums as may become raisable for advancement as aforesaid, and the costs and expenses of and incident to the raising any such moneys or of and to the execution of the trusts of the said term; And after payment out of the moneys so raised of any such costs and expenses, shall pay and apply the same moneys to, between, or among, or for the maintenance, education, or advancement of the said child or children of the husband by the wife, or any of them, pursuant and in satisfaction of the charges and provisions in that behalf hereinbefore contained; And upon further trust that, subject as aforesaid, the trustees shall permit the rents and profits of the hereditaments and premises comprised in the said term or so much of the same rents and profits as shall from time to time remain after answering the trusts aforesaid to be received by the person or persons for the time being entitled to the same premises in reversion expectant on the said term.

Surplus rents to be taken by reversioner.

Power to appoint new trustees.

5. The statutory power of appointing a new trustee or new trustees of these presents shall be vested in, and exerciseable by, the husband during his life.

In witness, &c.

XXIV. TRUST Instrument *on* Marriage *of* Freeholds *and of* Leaseholds *in* Trust *for the* Husband *and* Wife *successively for* Life, *with* Remainder *to the* Issue *of the* Marriage *as the* Husband *and* Wife, *or the* Survivor, *shall* Appoint, *and, in* Default *of* Appointment, *to the* Children *in* Equal Shares *in* Tail *as* Tenants *in* Common, *with* Cross-remainders.

Parties.

THIS TRUST INSTRUMENT (*i*), made, &c., Between [*intended husband*], of, &c., of the first part; [*intended wife*], of, &c.,

(*i*) Stamp, *ad valorem* at 5*s.* per 100*l.* or portion of 100*l.* of the aggregate value of the freeholds and leaseholds settled. Such stamp to be adjudicated: see *ante*, p. 335, note (*c*).

of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part.

WHEREAS by a deed (hereinafter called the vesting deed) bearing even date with, but executed contemporaneously with these presents, and made between the same parties and in the same order as these presents, certain freehold and leasehold hereditaments situate at ——, in the county of ——, were vested in [*intended husband*] upon the trusts concerning the same by a trust instrument of even date therein referred to (meaning these presents): Now in consideration of the intended marriage between the said [*husband*] and [*wife*], THIS DEED WITNESSETH as follows:

Grant of freeholds.

1. The said [*intended husband*] hereby agrees that he will hold the hereditaments and property comprised in the vesting deed upon trust for himself until the marriage, and, after the marriage, upon trust for him the said [*husband*] during his life without impeachment of waste, with remainder after his death upon trust for the said [*wife*] during her life without impeachment of waste, with remainder after her death upon trust for all or such one or more of the issue of the marriage in such manner as the said [*husband*] and [*wife*] shall by deed appoint, and in default of and subject to any such appointment as the survivor of them shall by deed or will or codicil appoint; AND in default of and subject to any appointment under either of the powers hereinbefore contained, if there shall be only one child of the marriage, upon trust for such only child in tail, but if there shall be more than one such child, then upon trust for all such children in equal shares as tenants in common in tail, with cross-remainders between them in tail, with remainder upon trust for the said [*husband*] absolutely: [*Here insert such powers and provisions as may be advisable, see preceding precedents*].

Habendum.
To trustees until the marriage to use of husband;
and afterwards, to use of husband for life;
remainder to use of wife for life;
remainder to issue of marriage as husband and wife or survivor appoint;
in default to use of children as tenants in common in tail;
remainder to use of husband in fee.

2. The trustees or trustee for the time being of these presents shall be trustees or trustee of the settlement hereby created for all the purposes of the Settled Land Act, 1925, and of any other Act or Acts for the time being relating to settled lands, and also for the purposes of the Conveyancing Acts.

Trustees to be trustees for the purposes of the Settled Land Act, 1925, and Conveyancing Acts.

3. The statutory power of appointing a new trustee or new trustees of these presents shall be vested in the said [*husband*] and

Power to appoint new trustees.

XXIV. MARRIAGE SETTLEMENT OF FREEHOLDS AND LEASEHOLDS.

[*wife*] during their joint lives, and the survivor of them during his or her life.

[*Power to trustees to employ agents, &c., p.* 353, *clause* 21.]

IN WITNESS, &c.

VESTING DEEDS.

I. VESTING DEED *for* GIVING EFFECT *to a* SETTLEMENT *subsisting at the commencement of the Settled Land Act,* 1925 (*a*).

THIS VESTING DEED, made the —— day of ——, 19—, BETWEEN X. [*trustee*], of, &c., and Y. [*trustee*], of, &c. (hereinafter called "the trustees"), of the one part, and A. [*tenant for life*], of, &c., of the other part.

WHEREAS under and by virtue of the settlement created by the indenture dated the —— [*or,* "by the will of —— dated ——, &c.," *or,* "by the several deeds and instruments set out in the first schedule hereto"] the said A. is tenant for life or a person having the powers of a tenant for life of an estate in possession of the freehold and leasehold lands and hereditaments described in the second and third schedules hereto respectively, and has attained the age of twenty-one years.

AND WHEREAS the said A. [*or,* "——, ——, ——," *as the case may be*] is the person for the time being entitled under the said settlement to appoint new trustees of the same. [*Or*

[AND WHEREAS by an order of the Chancery Division made by Mr. Justice —— on the —— day of ——, &c., the trustees were appointed and now are the trustees of the said settlement for the purposes of the Settled Land Act, 1925].

AND WHEREAS the trustees are the trustees of the said settlement for the purposes of the Settled Land Act, 1925, and the

(*a*) Stamp, 10*s*. Separate vesting deeds may be executed of separate properties subject to the same settlement: see *Re Clayton's Settled Estate,* [1926] W. N. p. 54.

I. VESTING DEED OF SETTLEMENT PRIOR TO 1926.

said A. has requested them to execute this vesting deed for giving effect to the said settlement. Now for giving effect to the requirements of the Settled Land Act, 1925, THIS DEED WITNESSETH as follows:—

1. The trustees, as trustees, hereby declare that ALL and singular the lands, hereditaments and premises respectively mentioned in the [——] and [——] schedules hereto, and all other (if any) the premises capable of being vested by this declaration which are now by any means subject to the limitations of the said settlement are vested in the said A. as to the freehold hereditaments mentioned in the [——] schedule hereto in fee simple and as to the leasehold hereditaments mentioned in the [——] schedule hereto for all the residue of the terms of years for which the same are respectively held.

2. The said A. shall stand possessed of the said premises upon the trusts and subject to the powers and provisions upon and subject to which under the said settlement or otherwise the same ought to be held from time to time.

3. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

4. The following additional or larger powers are conferred by the said settlement in relation to the settled land, and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act upon a tenant for life:—

[*Here set out the additional powers as*—

1.

2.

3.]

5. The said A. hereby covenants with the trustees, and as a separate covenant with each of them, that he will henceforth, during the continuance of the said respective terms, pay the rents reserved by, and perform and observe the covenants on the part of the lessee and conditions contained in the said respective indentures of lease, and will at all times keep the trustees and their respective heirs, executors, and administrators ["and the estate and effects of the said X." if the trustees are the trustees of a lessee's will] effectually indemnified against all actions and proceedings, costs, damages, expenses, claims, and demands whatso-

I. VESTING DEED OF SETTLEMENT PRIOR TO 1926.

ever by reason or on account of the non-payment of the said rents or any part thereof, or the breach, non-performance, or non-observance of the said covenants and conditions, or any of them.

6. The power of appointing a new trustee or new trustees of the settlement is vested in the said A. during his life [*or, as the case may be*].

In witness, &c.

First Schedule.

[*Deeds.*]

Second Schedule.

[*Lands, &c. of Freehold Tenure.*]

Third Schedule.

[*Leaseholds.*]

II. VESTING Deed *on* Settlement *of* Lands *by the* Intended Husband.

THIS VESTING DEED, made the —— day of ——, 19—, Between [*intended husband*], of, &c. (hereinafter called "the husband"), of the first part; [*intended wife*], of, &c. (hereinafter called "the wife"), of the second part; and [*trustees*], of, &c. (hereinafter called "the trustees"), of the third part.

Whereas a marriage is intended shortly to be solemnised between the husband and wife.

And whereas the husband is seised of the several messuages, lands and hereditaments described in the first schedule hereto for an estate of inheritance in fee simple in possession free from incumbrances; And is possessed of the several messuages, lands, and premises described in the second schedule hereto for the respective residues of the terms for which the same are respectively held under the several indentures of lease in the same schedule mentioned, subject to the respective rents, covenants and conditions by and in the said indentures of lease reserved and contained.

And whereas upon the treaty for the said intended marriage it was agreed that all the said hereditaments and premises should be settled in the manner herein and in the trust instrument bearing even date with these presents appearing.

NOW THIS VESTING DEED WITNESSETH, and it is declared as follows:—

1. In pursuance of the said agreement, and in consideration of the said intended marriage, the husband, as settlor, hereby declares that All and singular the lands and hereditaments described in the first schedule hereto are vested in the husband in fee simple, and all the lands and premises described in the second schedule hereto are vested in the husband for the respective residues of the terms for which the same are respectively held upon the trusts declared concerning the same by a trust instrument bearing even date with but intended to be executed contemporaneously with these presents, and made between the same parties and in the same order as these presents, and upon such other trusts as the same ought to be held from time to time.

2. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

3. The following additional or larger powers are conferred by the said trust instrument in relation to the settled land, and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act upon a tenant for life.

1. [*Here insert additional powers.*]

2.

4. The power of appointing a new trustee or new trustees of the settlement shall be vested in the husband during his life, and after his death in the person, if of full age and otherwise competent for the time being, entitled beneficially to the receipt of the rents and profits of the said settled lands, hereditaments, and premises, and if there shall be no such person then by the person or persons in whom such power is vested by statute.

In witness, &c.

First Schedule.

First Part.

[*Manors, Advowson and Incorporeal Hereditaments.*]

II. VESTING DEED ON SETTLEMENT OF LAND.

Second Part.

[*Freehold Lands referring to annexed plans.*]

SECOND SCHEDULE.

[*Leaseholds.*]

Date of Lease.	Parties.	Term Rents.	Property Demised.

MODEL FORMS OF INSTRUMENTS
FROM S. L. A. 1925, 1ST SCHEDULE.

I. VESTING DEED *for* GIVING EFFECT *to a* SETTLEMENT *subsisting at the commencement of this Act.*

THIS VESTING DEED is made, &c., BETWEEN X., of, &c., and Y., of, &c. (hereinafter called "the trustees"), of the one part, and T. L., of, &c., of the other part.

[*Recite the settlement under which T. L. is a tenant for life of full age in possession of the freeholds and leaseholds respectively described in the first and second schedules and has power to appoint new trustees, and the trustees are trustees for the purposes of the Settled Land Act,* 1925, *also the request by T. L. that the trustees should execute the requisite vesting deed*].

Now for giving effect to the requirements of the Settled Land Act, 1925, THIS DEED WITNESSETH as follows:—

1. The trustees, as trustees, hereby declare that ALL and singular the hereditaments and premises respectively mentioned in the first and second schedules hereto, and all other (if any) the premises capable of being vested by this declaration which are

I. TO GIVE EFFECT TO SETTLEMENT MADE PRIOR TO 1926.

now by any means subject to the limitations of the recited settlement are vested in the said T. L. as to the freehold hereditaments mentioned in the first schedule hereto in fee simple, and as to the leasehold hereditaments mentioned in the second schedule hereto, for all the residue of the terms of years for which the same are respectively held.

2. The said T. L. shall stand possessed of the premises upon the trusts and subject to the powers and provisions upon and subject to which under the recited settlement or otherwise the same ought to be held from time to time.

3. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

4. The following additional or larger powers are conferred by the said settlement in relation to the settled land, and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life. [*Here insert the additional powers.*]

5. [*Add the usual covenant by T. L. with the trustees to pay the rent in respect of leasehold hereditaments, observe the lessee's covenants, and keep the trustees indemnified.*]

6. The power to appoint a new trustee or new trustees of the settlement is vested in the said T. L. during his life.

In witness, &c.

Note.—Add the schedules. In the first part of the first schedule give particulars of the manors, advowsons, and other incorporeal hereditaments. In the second part give particulars of the freehold land, referring, if practicable, to annexed plans, so that the vesting deed may ultimately become a convenient root of title. Unless this is done the deeds referred to will for purposes of the parcels remain part of the title. In the second schedule give particulars of the dates of and parties to the leases of the leasehold hereditaments, and short particulars of the properties demised, the terms, and the rents. If there are any mortgages having priority to the settlement these should be mentioned in another schedule and referred to in the recitals.

II. VESTING DEED ON SETTLEMENT OF LAND.

II. VESTING DEED *on the* SETTLEMENT *of* LAND.

THIS VESTING DEED, made, &c., BETWEEN John H., of, &c., of the first part; Jane W., of, &c., of the second part; and X., of, &c., Y., of, &c., and Z., of, &c. (hereinafter called "the trustees"), of the third part.

WITNESSETH, and it is hereby declared as follows:—

1. In consideration of the intended marriage between John H. and Jane W., the said John H., as settlor, hereby declares that ALL THAT [*setting out the parcels by reference to a schedule or otherwise*] are vested in John H. in fee simple [*or*, in the case of leaseholds refer to the terms] upon the trusts declared concerning the same by a trust instrument bearing even date with but intended to be executed contemporaneously with these presents, and made between the same parties and in the same order as these presents, or upon such other trusts as the same ought to be held from time to time.

2. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

3. The following additional or larger powers are conferred by the said trust instrument in relation to the settled land, and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life. [*Here insert the additional powers.*]

4. The power of appointing a new trustee or new trustees of the settlement is vested in the said John H. during his life.

IN WITNESS, &c.

III. TRUST INSTRUMENT *on the* SETTLEMENT *of* LAND.

THIS TRUST INSTRUMENT is made, &c., BETWEEN John H., of, &c. (hereinafter called "the settlor"), of the first part; Jane W., of, &c., of the second part; and X., of, &c., Y., of, &c., and Z., of, &c. (hereinafter called "the trustees"), of the third part.

WHEREAS by a deed (hereinafter called the vesting deed) bear-

III. TRUST INSTRUMENT ON SETTLEMENT OF LAND.

ing even date with, but executed contemporaneously with these presents, and made between the same parties and in the same order as these presents, certain hereditaments situated at ——, in the county of ——, were vested in the settlor upon the trusts declared concerning the same by a trust instrument of even date therein referred to (meaning these presents).

Now in consideration of the intended marriage between the settlor and Jane W., THIS DEED WITNESSETH as follows:

1. The settlor hereby agrees that he will hold the hereditaments and property comprised in the vesting deed in trust for himself until the solemnisation of the said marriage, and thereafter upon the trusts following, that is to say:—

2. Upon trust for the settlor during his life without impeachment of waste with remainder upon trust if Jane W. survives him that she shall receive out of the premises during the residue of her life a yearly jointure rentcharge of, &c., and subject thereto upon trust for the trustees for a term of 800 years from the date of the death of the settlor without impeachment of waste upon the trusts hereinafter declared concerning the same. And subject to the said term and the trusts thereof upon trust for the first and other sons of the said intended marriage successively accordingly to seniority in tail male with remainder, &c., with an ultimate remainder in trust for the settlor in fee simple.

[*Here add the requisite trusts of the portions term, and any other proper provisions, including the appointment of the trustees to be trustees of the settlement for the purposes of the Settled Land Act*, 1925, *extension of Settled Land Act powers, and a power for the tenant for life for the time being of full age to appoint new trustees of the settlement.*]

In witness, &c.

Note.—The vesting deed and the trust instrument can be executed as escrows till the marriage.

IV. SUBSIDIARY VESTING DEED.

IV. SUBSIDIARY VESTING DEED *on* SALE *when the* LAND *is* PURCHASED *with* CAPITAL MONEY.

THIS SUBSIDIARY VESTING DEED is made, &c., BETWEEN Henry V., of, &c. (hereinafter called "the vendor"), of the first part; X., of, &c., Y., of, &c., and Z., of, &c. (hereinafter called "the trustees"), of the second part; and John H., &c. (hereinafter called "the purchaser"), of the third part.

WHEREAS the vendor is entitled for an estate in fee simple in possession free from incumbrances to the hereditaments hereinafter conveyed, and has agreed to sell the same to the purchaser at the price of £——.

AND WHEREAS by a principal vesting deed (hereinafter called the principal deed) dated, &c., and made, &c. (Form No. 2), certain hereditaments were vested in the purchaser upon the trusts of a trust instrument of even date therewith, and by [*endorsements on*] the principal deed the trustees were stated to be the trustees of the settlement for the purposes of the Settled Land Act, 1925.

NOW THIS DEED WITNESSETH as follows:—

1. In consideration of the sum of £—— now paid to the vendor by the trustees by the direction of the purchaser (the receipt of which sum the vendor hereby acknowledges), the vendor, as beneficial owner, hereby conveys unto the purchaser, ALL THOSE, &c., TO HOLD unto the purchaser [in fee simple] upon and subject to the same trusts and powers as are declared by the principal deed by reference as aforesaid with respect to the hereditaments therein comprised.

2 and 3. [*Same as* 2 *and* 4 *in Form No.* 2].

IN WITNESS, &c.

NOTE.—On a purchase of a term of years absolute out of capital money, the term must be conveyed to the tenant for life, if any, of full age, instead of to the trustees of the settlement. If there is a minority the land will be conveyed to the personal representatives or to the Settled Land Act trustees.

V. VESTING ASSENT *by* PERSONAL REPRESENTATIVE (*a*). V. ASSENT.

1. E. F., of, &c., and G. H., of, &c., as the personal representatives of X. Y., late of, &c., deceased, do this —— day of ——, 19—, hereby, as personal representatives, assent to the vesting in C. D., of, &c., of [all that farm, &c.] or [all the property described in the schedule hereto] for all the estate or interest of the said X. Y. at the time of his death [*or*, for an estate in fee simple].

2. The premises are vested in the said C. D. upon the trusts declared concerning the same by, &c.

3. The said E. F. and G. H. are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

4 and 5. [*Same as* 3 *and* 4 *in Form No.* 2.]

As WITNESS, &c.

NOTE.—The expression "conveyance" includes an assent, but an assent will relate back to the death unless a contrary intention appears.

An assent will not be properly postponed merely because death duty remains to be paid. The representatives have only to be satisfied (*e.g.*, where the tenant for life has directed payment out of capital money or has executed a mortgage for raising the money as and when an instalment becomes due) that the duty will be paid.

For Vesting Deeds included Elsewhere.

Vol. I. p. 486.—Transfer under Land Registration Act, 1925, to a tenant for life in lieu of a vesting instrument under a settlement.

Vol. I. p. 697.—Subsidiary Vesting Deed supplemental to Principal Vesting Deed and to Deed of Enlargement of long term settled by settlement existing before 1926.

Vol. I. p. 698.—Subsidiary Vesting Deed of freeholds and declaration of trust of leaseholds vested in trustees by way of security which have become discharged from the right of redemption under a Foreclosure Order or the Statutes of Limitation where the money was advanced out of capital moneys under a strict settlement of realty.

(*a*) No stamp is necessary.

COMMENCEMENTS, &c.

COMMON FORMS IN WILLS.

COMMENCEMENTS, &c. (*a*).

Commencement of will. Revocation of former wills.

1. I, [*testator*], late of, &c. (*b*), and now of, &c., HEREBY REVOKE (*c*) all wills, codicils, and testamentary dispositions heretofore made by me, AND DECLARE this to be my last will.

Commencement of codicil.

2. THIS is a [second] codicil to the will of me, [*testator*], of, &c., which bears date the —— day of —— (*d*).

Another form.

3. I, [*testator*], of, &c., HEREBY DECLARE this to be a [second] codicil to my will, which bears date, &c.

Plan of the Forms and Precedents in this volume.

(*a*) Although all the clauses to be found in ordinary wills may be classified and reduced to a moderate number of common forms, yet their combinations in practice create such variety that scarcely any two wills are alike, and a complete will is therefore seldom available as a precedent, beyond furnishing a few of the forms which the draughtsman must gather from many sources and put together, with more or less of alteration in a new order. For this reason precedents of complete wills are far less useful than precedents of conveyances, leases, mortgages, settlements, and other instruments, of which, their scope being both narrower and better defined than that of wills, the conveyancing elements are fewer and recur more often in the same combinations.

(*b*) The mention of a past as well as present address may often be useful as evidence of a testator's identity when he may have been registered by a former address in the books of the Bank of England, or of a company, as the holder of any stock or shares.

(*c*) It is better expressly to revoke all former wills than to leave open the inquiry whether they are wholly superseded by the new one. The words "This is the last and only will" would not amount to a revocation of a former will: *Simpson* v. *Foxon*, [1907] P. 54. As to the effect of an express revocation of "all former wills," see *Sotheran* v. *Dening*, 20 Ch. D. 99; *Re Kingdon*, 32 Ch. 604; *Re Gibbes*, 37 Ch. D. 143.

An express revocation such as here inserted complies with the requirements of sect. 20 of the Wills Act, 1837, being "a writing declaring intention to revoke, and executed in the manner in which a will is required to be executed" by the Act. An express revocation may be placed at the beginning or at the end of a will.

(*d*) See *In bon. Reade*, [1902] P. 75, in which case the will was incorrectly described.

COMMENCEMENTS, &c.

4. But I direct that this will shall not take effect if I leave any issue surviving me (*e*). — Will conditional on not leaving issue.

5. This is the last will of me [*testator*], of, &c., intended to operate on, and dispose of all my real and personal property in the United Kingdom; I revoke all wills, codicils, and testamentary dispositions heretofore made by me; but I declare that this will shall take effect concurrently with, but independently of another will of even date herewith, relating to property not intended to be affected by this will, situate at ——, in the Kingdom of [Italy]. — Commencement of will. Where testator has property abroad.

6. I confirm the settlement [*or*, several settlements] made on my marriage with [*name*], my present wife, and I declare that the provisions hereby made for my said wife and children shall be construed as supplemental to, and not in satisfaction of, any of the provisions made or covenanted to be made in and by the same settlement [*or*, settlements respectively]. — Confirmation of marriage settlement.

7. This is the last will of me [*testator*], of, &c., made in contemplation of the marriage to be solemnised on or about the —— day of ——, between myself and ——, of, &c., and intended to take effect only in the event of such solemnisation (*f*). — Will made in contemplation of marriage.

APPOINTMENT OF EXECUTORS, &c.

1. I appoint [*executor*], of, &c. [*or*, my son [*name*]] sole executor of my will. — Appointment of executors.

2. I appoint my wife, [*name*], sole executrix of my will.

(*e*) This clause is applicable where a married testator, being childless, makes no provision for children by his will, if the birth of issue by his present wife is even remotely probable. But it is generally much better, under such circumstances (unless in a case of emergency, where brevity is essential), to insert express provisions for children. — Possibility of issue should be provided for.

(*f*) This clause is framed to accord with L. P. A. 1925, s. 177. As the new legislation, however, leaves such a will valid if the marriage does not take place, the clause should contain the necessary provision.

APPOINTMENT OF EXECUTORS, &c.

3. I APPOINT [*executor*], of, &c., and [*executor*], of, &c., executors [and trustees] of my will [except as regards the property hereinafter mentioned (*g*)]; AND I declare that the expression "my trustees" shall include the said [*trustees*] and the survivor of them, or other the trustees or trustee for the time being of this my will.

Executors except as to certain property.

Wife and son executors. Wife a trustee only during widowhood.

4. I APPOINT my wife, [*name*], during her widowhood, and my sons, [*name*], and [*name*], of, &c., to be executrix and executors (*h*) and trustees of this my will; but if my wife should marry again, all property hereby devised and bequeathed in trust shall, as soon as may be, be transferred to, and vested in the other trustee or trustees for the time being of this my will; AND I declare that the expression "my trustees" shall include the said [*trustees*] and the survivors and survivor of them, or other the trustees or trustee for the time being of my will.

Substitutive appointment of executors and trustees.

5. I APPOINT [*executor*], of, &c., and [*executor*], of, &c., executors and trustees of my will, and in case either or both of them shall die in my lifetime, or renounce probate, then I appoint [*substituted executor*], of, &c., executor in his or their place. AND in case either or both of the said [*executors*] shall die in my lifetime or decline to act as trustees or trustee, then I appoint the said [*substituted executor*] to be trustee in his or their place; AND in such case, I declare that this my will, and all the devises, bequests, powers, and provisions hereinafter contained, shall be read and construed in the same manner, and shall have the same operation and effect in all respects as if the name of the said [*substituted executor*] had been inserted therein instead of the name of the trustee or trustees so dying or refusing as aforesaid; AND I declare that the expression, &c. [*see Form* 3].

(*g*) These words in brackets will be inserted where the appointment of general executors is followed by an appointment of special executors: see *post*, Forms 7 to 12, and 17.

(*h*) The use of the word "executors" with reference to several persons, one of whom is a female, is quite warrantable.

APPOINTMENT OF EXECUTORS, &c.

6. I APPOINT my son, [*name*], if and when he shall attain the age of twenty-one years, executor and trustee of my will; AND I direct that upon his attaining that age, the trust property shall be transferred to, and vested in him jointly with the other trustees or trustee for the time being of this my will.

Appointment of son at twenty-one as executor with others.

Special executorship of life policies.

7. I APPOINT [*legatee*] executor of this my will, so far only as concerns the several policies of insurance, and the moneys, bonuses, and additions secured by or to be received in respect of the same, hereinafter bequeathed to him; AND I direct that the expense of the limited probate to be taken out by the said legatee shall be borne by him [*or*, paid out of my general personal estate] (*j*); AND I appoint [*executor*] and [*executor*] general executors of this my will.

Special executorship of business or share of business (*k*);

8. I APPOINT my son, [*name*], my executor so far only as concerns my [share and interest in the partnership] business of ——, carried on at ——, in the County of —— [under the style or firm of [A. & Co.]], and in the [partnership] property, moneys, debts [arrears of profits] and assets of the said business hereinafter respectively bequeathed to him. AND I direct that the estate duty and expenses of the limited probate to be taken out by my same son shall be paid out of my residuary estate [*or*, "shall be borne by him"].

Special executorship of mortgage debt and securities.

9. I APPOINT the said [*legatee*] to be my executor, so far only as concerns the mortgage [bond] debt and interest hereinafter bequeathed to him, and the benefit of all securities for the same (*l*); AND I direct, &c. [*as in Form* 8, mutatis mutandis].

Expense of limited probate.

(*j*) It is advisable to direct on whom the expense of a limited probate is to fall, as the point may otherwise occasion dispute. The "general" executors are the personal representatives for the purpose of the A. E. A. 1925, ss. 36, 37: see *Re Parker*, [1894] 1 Ch. 707; *Re Cohen's Executors, &c.*, [1902] 1 Ch. 187.

(*k*) For form of bequest of a business or share in a business, and ancillary clauses, see *post*, p. 486, Forms 1 and 2. Where a testator's business is bequeathed to one or more, as trustees, who are appointed special executors, an express power to compromise, &c. should be inserted in the will: see *post*, p. 488, Form 4.

(*l*) Sect. 30 of the Conveyancing Act, 1881, does not purport to affect the devolution of the mortgage debt, so that it would seem that a special

APPOINTMENT OF EXECUTORS, &c.

10. I APPOINT those who at my decease shall be trustees of the settlement created by an indenture of settlement dated the —— day of ——, under which I have a life interest in certain hereditaments situate at ——, in the county of ——, to be my special executors in regard to such hereditaments (*m*).

Bequest of leaseholds. Legatee of leaseholds to be limited executor.

11. I GIVE AND BEQUEATH to [*name*], of, &c., my leasehold messuage at ——, with the appurtenances, in my occupation at the date of this my will, and all the term and interest I shall have therein at my decease. AND I appoint the said [*name*], executor of this my will, so far as relates to the said leasehold messuage and premises, but not in respect of any other part of my personal property and effects (*n*). AND I direct that the expense attending the limited probate to be taken out by the said [*name*] shall be paid out of my residuary personal estate [*or*, "by him"].

Literary executor.

12. I APPOINT [*literary executor*], of, &c., my executor in respect only of all my letters, manuscripts, and documents, and all copyrights and other rights and privileges relating thereto hereinafter bequeathed to him.

Executor as to letters, &c.

13. I BEQUEATH to [*legatee*], of, &c., all my letters, letter books, and papers (other than vouchers, accounts, account books, and the manuscripts of any treatises or works which I may be preparing for publication), and I appoint him executor in respect only of the same; AND I direct him to examine the same, and to destroy all such papers as he shall think ought not to be preserved, and

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executor may be appointed for this purpose, but it seems doubtful whether any advantage would be gained by so doing, as the legal estate in the mortgaged property would apparently devolve on the general executors or executor, either alone or jointly with the special executor (a point which is not quite free from doubt), as being the "personal representatives" of the testator within the meaning of the section: and see *post*, p. 483, note (*g*).

(*m*) This appointment is made under A. E. A. 1925, s. 22.

Convenience attending the creation of a limited executorship of leaseholds, &c.

(*n*) Where a leasehold estate or a legal chose in action is bequeathed specifically, it is convenient to constitute the legatee executor, *quoad* the subject of gift, for the purpose of clothing him with the rights, and of exempting the general executors from the risks incident to the representative character in regard to the property in question.

particularly, &c.; AND I declare that it shall be at his absolute discretion (except as regards, &c.) to show the same, or any of them, or to disclose their contents to any other person. APPOINTMENT OF EXECUTORS, &C.

14. I APPOINT the Public Trustee a [custodian] trustee of this my will. Appointment of Public Trustee alone (*o*).

15. I APPOINT [*executors*], the executors, and together with the Public Trustee, the trustees of this my will. Appointment of Public Trustee with others.

Or,

I APPOINT the Public Trustee executor and trustee of this my will [and trustee for the purposes of the Settled Land Act, 1925], and I desire that, under Public Trustee Act, 1906, s. 11 (2), Messrs. ——, solicitors, be employed in all matters in connection with the trusts of this my will.

16. I DECLARE that the Public Trustee shall not be appointed a trustee or custodian trustee of this my will. Exclusion of Public Trustee (*p*).

Or,

I APPOINT the —— Insurance Company executor and trustee of this my will. Appointment of insurance company.

17. I APPOINT the —— Bank, Limited (hereinafter called "the bank"), executors and trustees of my will, and I declare that the bank may recoup themselves out of any moneys forming part of my estate in respect of all costs and expenses incurred by them in the administration of my estate or the execution of the trusts of my will, with interest at the rate of 5 per cent. per annum from the time of disbursement until recoupment thereof as afore- Appointment of a bank to be executors and trustees (*q*).

(*o*) See the Public Trustee Act, 1906 (6 Edw. 7, c. 55). For the rules under the Act, see [1907] W. N. 329.

(*p*) See Public Trustee Act, 1906, s. 5 (3).

(*q*) See *In the goods of Hunt*, [1896] P. 288; and *Re Richards*, [1901] 2 Ch. 399. As to a company acting as custodian trustee, see Public Trustee Act, 1906, s. 4 (3). As to a grant of representation to a trust corporation, see A. E. A. 1925, s. 14; and as to the effect of dissolution of a corporation to which such a grant has been made, see T. A. 1925, s. 36 (3).

APPOINTMENT OF EXECUTORS, &c.

said; AND FURTHER, that the bank shall be entitled to remuneration, free from all death duties, in accordance with the scale of fees fixed and in use by the bank at the date of my will.

Appointment of corporation in place of bank.

18. AND I DECLARE that if during my lifetime the said bank shall have for any purpose gone into liquidation, or by any other means ceased to exist, and its business shall have been acquired by and at my decease be still carried on by any other corporation, this my will shall be read and construed as if throughout therein the name of such company had replaced that of the said bank.

Appointment of special executor for property in a colony.

19. I APPOINT [*name*], of, &c., to be executor of this my will in respect of my property in ——; AND I devise and bequeath to him all such property real and personal upon trust, to sell, get in, and convert the same into money, and to remit the proceeds to my general executors hereinbefore appointed.

Appointment of S. L. A. trustees.

20. I APPOINT —— and —— to be trustees for the purposes of the Settled Land Act, 1925, of the settlement created by this my will.

Condition as to residence of trustee.

21. I DIRECT that any person appointed by this my will to be a trustee who shall cease to reside in the town of ——, or within —— miles of the Parish Church [*or*, Town Hall] of the said town, shall from the time of his ceasing so to reside cease to be a trustee, and that as soon as may be there shall be appointed, by my wife during her widowhood, and, after her decease, in the manner prescribed by law, a fit and proper person, resident as aforesaid, to replace as trustee the person so ceasing to reside (*s*).

(*s*) In construing Acts of Parliament, measurement is made "as the crow flies": *R.* v. *Saffron Walden*, 9 Q. B. 76; 15 L. J. M. C. 115; *Lake* v. *Butler*, 5 E. & B. 92; 24 L. J. Q. B. 273; likewise in construing contracts: *Duignan* v. *Walker*, Joh. 446; 28 L. J. Ch. 867; *Mouflet* v. *Cole*, L. J. 8 Exch. 32; 42 L. J. Ex. 8; in this last case a distance is mentioned, but the way in which measurement is to be made is not stated. Distances mentioned in a will would, it is apprehended, be measured in the same way, and any other method or manner of measurement which the testator intends to be followed must be explicitly described by him.

APPOINTMENT OF EXECUTORS, &c.

22. I APPOINT my trustees to be guardians of my infant children [to act jointly with my wife during her life, and after her decease, with any guardians or guardian appointed by her].

Appointment of guardians (*t*).

Wife guardian during widowhood—then trustees or trustee for the time being.

23. I APPOINT my wife, [*name*], sole guardian of the persons and estates of my children during her widowhood; and after the death or marriage of my wife, I appoint the said [*executors*], and the survivors and survivor of them, or other the trustees or trustee for the time being of my will, guardians or guardian of my children during their respective minorities, and in case of my wife's marriage, jointly with her during the remainder of her life.

(*t*) Under the Guardianship of Infants Act, 1925, s. 4, on the death of the father of an infant, the mother, if surviving, shall be the guardian of such infant, either alone, where no guardian has been appointed by the father, or jointly with any guardian appointed by the father. Where no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead, or refuses or refuse to act, the Court may, if it shall think fit, from time to time, appoint a guardian or guardians to act jointly with the mother. It will be observed that there is no provision for the cesser of the mother's guardianship on marriage. In the event of her marriage, the Court will only interfere where, having regard to the real benefit of the infant, it ought to do so: *Re X.*, [1899] 1 Ch. 526; *F.* v. *F.*, [1902] 1 Ch. 690.

By sect. 3, sub-sect. 1 of the Act, the mother may appoint a guardian or guardians of her infant children after the death of both parents; and if both father and mother appoint guardians, they shall act jointly. By sub-sect. 2, the mother may by deed or will provisionally nominate a guardian or guardians to act jointly with the father, and such appointment may, on evidence of the father's unfitness, be confirmed by the Court: *Re G.*, [1892] 1 Ch. 292.

By sect. 4, every guardian under this Act is to have all the powers of guardians appointed under the Act 12 Car. 2, c. 24. By sect. 6, the Court has power to remove guardians "appointed or acting by virtue of this Act," and appoint another guardian in his or her place.

This Act does not affect the rule that the child is to be brought up according to the religious faith of its father, and the mother as statutory guardian is bound to observe this rule: *Re Scanlan*, L. R. 40 Ch. D. 200. As to where the Court will depart from this rule and interfere for the benefit of the child, see *Re Newton*, [1896] 1 Ch. 740; *Re Nevin*, [1891] 2 Ch. 299; *Re McGrath*, [1893] 1 Ch. 143; *Re W.*, [1907] 2 Ch. 557; *Ward* v. *Laverty*, [1925] A. C. 101.

APPOINTMENT OF EXECUTORS, &C.

24. I APPOINT [*guardian*], of, &c., during his life, and after his death such person or persons as he shall by will appoint or nominate to be guardian or guardians of my children during their respective minorities.

Guardian with power to appoint successor (*u*).

Guardian with power to substitute.

25. I APPOINT [*guardian*], of, &c., and [*guardian*], of, &c. [*or*, the said [*trustees*], and the survivors and survivor of them], to be the guardians of my son, [*name*], during his minority; and in case of the death of either of them, the said [*guardians*], during such minority, then I authorise and empower the survivor of them to appoint such person as he shall think fit to be a guardian jointly with himself of the said [*son*] in the place of the guardian so dying.

Guardians of children, including an illegitimate child.

26. I APPOINT my sister, [*name*], and the trustees or trustee for the time being of this my will, guardians and guardian of each son of mine during his minority, and of [*illegitimate daughter*] (*x*), and every other daughter of mine during minority and until marriage.

DIRECTIONS AS TO FUNERAL, PAYMENT OF DEBTS, ETC.

Direction respecting funeral.

1. I DESIRE that I may be buried in as simple and inexpensive a manner as possible in my family vault at —— [*or*, in some cemetery or churchyard near the place of my death].

Direction as to cremation.

1*a*. I DESIRE my body to be cremated, and the ashes interred in the family grave at St. —— Churchyard.

(*u*) See, as to delegation by the father to another person of the power to appoint guardians after his death, 12 Car. 2, c. 24, ss. 8 and 9; and *In the goods of Parnell*, L. R. 2 P. & M. 379.

As to appointment of guardians of illegitimate children.

(*x*) With respect to the illegitimate child, this appointment of guardians will be invalid, as the testator does not stand in a recognised parental relation to her: *Sleeman* v. *Wilson*, L. R. 13 Eq. 36. The nomination, however, is not without use, as the Court will generally appoint to the guardianship persons nominated by a putative father: *Ward* v. *St. Paul*, 2 B. C. C. 583; *Peckham* v. *Peckham*, 2 Cox, 46; *Chatteris* v. *Young*, 1 J. & W. 106.

DIRECTIONS AS TO FUNERAL, DEBTS, &C.

2. I DIRECT that the expense of my funeral shall not exceed £——.

The same.

3. I CHARGE my freehold estates [at ——, in the county of ——] with the payment of my funeral and testamentary expenses, debts (including debts secured by mortgage) and legacies hereinafter bequeathed in exoneration of my personal estate (*y*).

Charge of debts, &c. on real estate, in exoneration of personalty.

Charge of debts.

4. I CHARGE all my real estates not hereinafter specifically devised, equally and *pari passu* in the first instance with my personal estate, with the payment of my debts (*z*).

Direction for payment of mortgage debt out of personalty (*a*).

5. I DIRECT that the debt of £—— owing by me to [*mortgagee*], of, &c., on the security of a mortgage, dated, &c., and made, &c., on my farm and lands at ——, in the county of ——, and all interest due thereon up to the time of payment of the same sum, shall be paid out of my residuary personal estate, in exoneration of the mortgaged premises.

Charge of legacies on specific real estates.

6. I CHARGE all the legacies hereinafter [*or*, hereinbefore] bequeathed on my real estate situate at ——, hereinafter devised to [*devisee*] in aid of my personal estate in case the same should prove to be deficient.

(*y*) See A. E. A. 1925, ss. 38, 39.

An express power to raise money on mortgage for payment of debts, &c. will be found *post*, at p. 592, Form 34.

Necessity of explicitness as to personalty being exempt from debts and legacies.

(*z*) Where it is intended to exonerate the personalty, either altogether or in part, from its primary liability to pay debts, it is necessary to do so by an express charge of the property intended to form the fund for payment of debts, &c.

A direction to pay debts is unnecessary, as such a direction merely amounts to a general charge of debts on the real and personal estate, in the order in which such property is chargeable by law, independently of any direction. As to the distinction between a "direction" and a mere "authority" to pay debts, see *Re Head's Trustees and Macdonald*, L. R. 45 Ch. D. 310.

(*a*) See A. E. A. 1925, s. 35.

SPECIAL BEQUESTS.

SPECIFIC BEQUESTS (*b*).

Wearing apparel to servant.

1. I BEQUEATH my wearing apparel (*c*) to my servant [*name*], if he shall be in my service at the time of my death.

Wearing apparel among servants.

2. I DIRECT that my wearing apparel be distributed among such of my servants, and in such manner as my executors shall, in their uncontrolled discretion, think proper.

Wearing apparel, trinkets, &c.

3. I BEQUEATH all my wearing apparel, watches, jewelry, trinkets, dressing-cases, and articles of personal decoration or ornament, to [*legatee*], for her own absolute use and benefit.

Letters, &c. to wife (*d*).

4. I BEQUEATH to my wife all my letters, copies of letters, correspondence, papers, memoranda, manuscripts, and writings, [except documents of title, securities for money, vouchers, and accounts, relating to the property or rights of my heirs, executors, trustees, devisees, or legatees, or any of them], and I request my wife to examine all my said letters, copies of letters, correspondence, papers, memoranda, manuscripts, and writings, and to destroy such of the same as she shall in her absolute discretion consider ought not to be preserved, and I declare that it shall be at her like absolute discretion whether or not she shows any of the same, or the contents thereof, to any other person.

Manuscripts, copyright, &c. to wife.

5. I BEQUEATH to my wife all my published works, and all the manuscripts of my unpublished works, together with all my copyright and all other rights and privileges in my published works,

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(*b*) If it is intended that a specific legacy is to be free of legacy duty, the words "free of duty" should be added to the gift: see Legacy Duty Act, 1796, ss. 6, 24; otherwise the payment of legacy duty in respect of a specific legacy falls upon the legatee. Though, for purposes of ascertaining the full value of the estate a specific legacy is included in the account, it is not liable to pay its proportionate part of the estate duty, as such duty, being a testamentary expense, is payable out of residue. It should be noted that the upkeep of a specific legacy until it is assented to falls upon the legatee.

(*c*) In a gift of wearing apparel, it may be of importance either to include or to exclude "furs" or "lace."

(*d*) For form of bequest of letters, &c. to special executor, with directions for their destruction, see *ante*, p. 464, Form 12.

and full right to publish or complete the publication of my unpublished works (*e*). SPECIFIC BEQUESTS.

6. I BEQUEATH to my elder son, [*name*], my gold watch, chain, and appendages, and jewelry and personal ornaments. Watch, &c.

7. I BEQUEATH to my younger son, [*name*], all my horses and carriages, and motor cars, with the harness, saddlery, trappings, and other accessories belonging thereto. [*Or*, any one of my carriages, and any one pair of my horses [together with one set of double harness, and one set of single harness for the same, to be selected by him respectively]] [*or*, any one of my motor cars, with the accessories belonging thereto.] Horses and carriages, &c.

8. I BEQUEATH to each of my friends, [*legatees*], —— dozen of my best wine, to be selected by them in the order in which they are herein named. Wine.

9. I BEQUEATH all my coins, ancient sculptures, original inscriptions, and copies of inscriptions, manuscripts, and other antiquities, and such of my printed books as they may consider useful, to the Trustees of the British Museum, to be deposited and kept in the department of antiquities or the public library there, as the case may be. Coins, &c. to British Museum (*f*).

10. I BEQUEATH to my son, [*name*], my collection of minerals and fossils, with the cabinets in which they are placed, requesting, but not insisting, that he will, unless he see reason to the contrary, leave them at his death to his brother, [*name*]. Minerals, &c., with a request as to their disposition.

11. I BEQUEATH to my eldest son, [*name*], absolutely all my books (*g*) and manuscripts; AND I request the said [*name*], but not so as to impose any legal obligation on him, or to create any trust or obligation in favour of any other person, to carry out Bequest of books, &c., with a provision avoiding a precatory trust.

(*e*) Copyright being personal property may be the subject of bequest.

(*f*) As to the payment of estate and legacy duty on property of "national, scientific or historic interest," see sect. 20 of Finance Act, 1894, amended by sect. 63 of Finance (1909-10) Act, 1910: *Re Scott*, [1916] 2 Ch. 268.

(*g*) Books held to include MSS. log-books of a ship: *Re T. J. Barratt*, 31 T. L. R. 502; and when coupled with "other leasehold effects." As to collection of postage stamps, see *Re Mason*, [1917] W. N. 182, 252.

SPECIFIC BEQUESTS.

my wishes as expressed in a letter addressed to the said [*name*], and deposited with my will, which letter I declare not to be testamentary.

Books, &c., part to wife, remainder to son at twenty-one.

12. I BEQUEATH to my wife, [*name*], all my music-books, and music, printed or in manuscript, and also such of my printed and other books, not exceeding in the whole 100 volumes, as she shall select. AND I bequeath the remainder of my books, whether printed or manuscript, except books of account, unto such son of mine living at my death as shall first attain the age of twenty-one years.

Books on payment of two-thirds of the value.

13. I GIVE to my son, [*name*], my library of books, including all additions thereto (*h*), or such part thereof as he shall select, on condition that he pay to my executors two-thirds of the value thereof, or of such part thereof as he shall select, such value to be ascertained by valuers, one to be appointed by my executors and one by my said son, or by any other means which shall be agreed on between my said son and my executors.

Household effects, &c. to wife.

14. I BEQUEATH to my wife, [*name*] (*i*), all my household furniture, pictures of every description in frames, plate, plated articles (*k*), linen, china, glass, musical instruments, books, watches, jewelry and trinkets, and personal ornaments and wearing apparel, motor cars (*l*), horses and carriages, and the

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(*h*) The gift of "my library" will carry books bought after the date of the will: *All Souls Coll.* v. *Codrington*, 1 P. Wms. 597.

As to naming the testator's wife.

(*i*) It is proper to mention the wife's name, although the will would necessarily be revoked by a second marriage; because it may happen that the parties have never been lawfully married, in which case the name will assist in identifying the person intended.

Misdescription of character of legatee.

The misdescription as wife of the testator of a named person to whom he was not lawfully married will not avoid the legacy: *Schloss* v. *Stiebel*, 6 Sim. 1; *Re Pitt's Will*, 27 Beav. 576; *Anderson* v. *Berkley*, [1902] 1 Ch. 936.

(*k*) Plated articles are not included in the word "plate": *Holden* v. *Ramsbottom*, 4 Giff. 205.

(*l*) Whether "motor cars" will pass under "carriages" will depend upon the collocation of words in which it occurs: *Re Hall*, 107 L. T. 196; [1912] W. N. 32; *Re Ashburnham*, 107 L. T. 601; [1912] W. N. 234; *Re White*, [1916] 1 Ch. 172. In the last case it was held that a motor

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equipage and furniture belonging thereto, cows, poultry, and other live stock, greenhouse and other plants in pots, gardening and husbandry implements, domestic animals, fuel, wines, liquors, and consumable stores, and other the household effects not hereinbefore bequeathed, and which shall be in or about the house in which I shall be residing at the time of my death, or in the garage, stables, coach-houses, or outbuildings thereof. AND I declare that the last mentioned bequest shall comprise all effects, though not strictly household, which are applicable to personal or domestic use, ornament, occupation, or diversion, and are not hereinbefore otherwise specifically bequeathed (*m*).

Personal chattels to wife.

15. I BEQUEATH to my wife [——] all such of my belongings as come within the definition of "personal chattels" contained in sect. 55 (1) (x) of the Administration of Estates Act, 1925, free of duty.

The same, to son. Short form with suggestion not to be deemed a trust.

16. I BEQUEATH to my eldest son, [*name*], all articles and effects of household, domestic, or personal use, ornament, occupation, or diversion belonging to me, and not hereinbefore otherwise specifically bequeathed (*n*). [AND I suggest that he shall distribute the same amongst my children (including himself) in such shares and manner as he shall think proper, but I expressly declare that this suggestion shall not be construed to create a trust in favour of my children, or in any manner to abridge or restrict the absolute property of my said son, [*name*], in the said articles and effects.]

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car passed under a gift of "furniture and all other articles of personal, domestic, or household use."

As to bequests of household furniture, &c.

(*m*) It is of no inconsiderable importance to choose the most appropriate words for describing those articles of personalty which are often bequeathed separately from the general estate, such as household furniture, &c., since many questions arise on such bequests; though, as they relate to matters of small value, comparatively few of them become subjects of judicial consideration. To this, probably, we must ascribe the fact that less attention has been paid to the framing of such gifts than to many other clauses of rarer occurrence. As to what passes under the words "household furniture," "household effects," &c., see *Re Seton Smith*, [1902] 1 Ch. 717. And as to furniture, articles of vertu, and curiosities, see *Re Baroness Zouche*, [1919] 2 Ch. 178.

(*n*) Where such is the intention the words "hereinbefore otherwise effectually disposed of" should be substituted for "hereinbefore otherwise specifically bequeathed."

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17. I BEQUEATH to —— all the chattels and effects which shall, at my death, be in or about my dwelling-house at —— aforesaid [*or*, in or about any house I may then reside in], other than money or securities for money (*o*), and deeds and documents of title.

Plate [or household effects] to children.

18. I BEQUEATH all my personal chattels (*p*) [*or*, all my plate] (*q*) [*or*, all chattels and effects, &c., *as in last form*] unto my children, [*names*], to be divided among them or such of them as shall be living at my death, in equal shares; AND in case any dispute should arise respecting the distribution of the same, my executors shall select and determine the specific articles to be taken by each legatee under this bequest.

Articles to be selected by wife.

19. I GIVE to my wife [the use, during her widowhood, of] such articles (not exceeding in the whole the value of £——), as she shall within the first three months after my death select from my household furniture and household effects, such value to be determined by my trustees.

Furniture in certain rooms.

20. I GIVE to my daughter, [*name*], all the household furniture and effects which at the time of my death shall be ordinarily used

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Securities for money.

(*o*) As to whether choses in action pass under a gift of "effects in the house," see *Re Craven*, 100 L. T. 284; *Re Robson*, [1891] 2 Ch. 559. "Securities for money" include Government stock, but not bank stock or other stock on which the dividends are variable (*Bescoby* v. *Pack*, 1 S. & St. 500; *Ogle* v. *Knipe*, L. R. 8 Eq. 434; *Walker* v. *Stewart*, 17 Ch. D. 819); nor, it has been held, an I.O.U., which is merely an acknowledgment of a debt (*Barry* v. *Harding*, 1 J. & L. 475); but will include unpaid purchase-money: *Callow* v. *Callow*, 42 Ch. D. 550. And it has bbeen held that "property invested in British or foreign funds, bonds, or *securities* of any description" does not include canal or railway shares: *Hudlestone* v. *Gouldsbury*, 11 Jur. 464; 10 Beav. 547; *Turner* v. *Turner*, 20 L. T. 30. But in *Re Rayner*, [1904] 1 Ch. 176, and *Re Gent and Eason's Contr.*, [1905] 1 Ch. 386, it was held that "securities" meant "investments," and included stocks and shares as well as mortgage securities.

(*p*) In this case the definition of personal chattels is as defined by A. of E. A. 1925, s. 55 (1) (x).

(*q*) "Plate" at a certain house will not include plate sent to bankers for custody: *Re Baroness Zouche*, [1919] 2 Ch. 178.

by her in the bed-chambers, nursery, and sitting-room then occupied by her and her children and her attendant, in my house. SPECIFIC BEQUESTS.

21. I BEQUEATH the several articles mentioned in the schedule hereto to the several persons whose names are set opposite to such articles respectively in the second column of the same schedule. Specific articles by reference to schedule (*r*).

22. I REQUEST the executors of this my will to distribute all articles and effects which may be specified in any list or memorandum signed by me, and deposited with this my will, or which may be left by me at my death, in accordance with any directions therein contained; but I declare that any such list or memorandum shall not be deemed to have any testamentary character or effect by way of creating any trust, or otherwise howsoever. Request to executors to distribute effects by reference to separate paper (*s*).

23. I BEQUEATH to my wife the use of [such leasehold house as I shall reside in at my death, and of] my household furniture, household linen, plate, plated articles, china, glass, books, pictures, prints, musical instruments, and other effects of a like nature Use of leasehold house and furniture to wife for life (*t*).

(*r*) The signature of the testator and attestation must, of course, be placed at the foot or end of this schedule: see Wills Act, 1837, s. 9.

(*s*) This request is of no legal value, as a separate document cannot be incorporated in a will unless it is in existence at the date of the will. It must also be borne in mind that executors acting in accordance with this request, without obtaining the consent of the residuary legatee, run some risk of being called to account as to their disposal of the articles.

In certain cases it may become a valid bequest, *e.g.*, if the bequest is communicated to a legatee and is assented to by him before testator's death: see *In re Gardner*, [1920] 2 Ch. 523. See also *In re Speir*, [1923] W. N. p. 274.

(*t*) By omitting the words in brackets, this form can be used for a gift of the use of furniture for life, without a house.

As to the liability of the estate of a tenant for life of chattels, where the limitations are legal, to pay as compensation the amount necessary to restore or replace articles lost or injured, see *Re Swan*, [1915] 1 Ch. 829.

As to the effect of a direction that the testator's wife shall during her life be entitled to use and occupy "a residence for her own personal use and occupation," see *Re Anderson*, [1920] 1 Ch. 175; *In re Gibbons*, [1920] 1 Ch. 372.

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[which shall at my death be in or about such house], during her life [widowhood], if she shall so long, at her own cost, keep the same [house and] articles in good repair and condition (reasonable wear and tear only excepted), [and insured in the names of my trustees to their full value from damage by fire], [and pay the rent and perform the covenants to which the lessee of the said house may be liable]. I direct that an inventory of the said articles whereof my wife is to have the use shall be taken, at the expense of my estate, as soon as convenient after my death, of which one copy shall be kept by my wife, and the other by my trustees, who are to determine [the amount of insurance to be made by my wife, and also], in case of dispute, what articles are included in this bequest; AND I exonerate my trustees from all duty and responsibility in respect of the custody or preservation of the said furniture and effects included in the bequest after delivery thereof to my said wife.

Inventory to be taken.

Wife to repair and insure;

24. I DIRECT that my wife shall during her life keep the said articles in good repair and condition (reasonable wear only excepted), and insured against fire to the full value thereof (such value to be assessed by my trustees), in some respectable office, in the names of my trustees, and deliver the receipts for each premium of insurance to my trustees, within one week after the same shall become payable; in default whereof, it shall be lawful for my trustees to repair or replace such of the said articles as shall be damaged, destroyed, or lost, or (as the case may be) to effect or keep on foot such insurance, and retain or recover the costs of such repairs, purchases, or insurance respectively, out of or by sale of any income, capital, or property given to my wife by my will.

in default, trustees may repair and insure.

Declaration dispensing with inventory.

25. I DECLARE that it shall not be necessary to take any inventory of the said furniture and effects, and that my trustees shall not be concerned to see to the insurance thereof, or be liable for any loss or damage thereof from any cause whatever.

Power of sale.

26. I DECLARE that it shall be lawful for my said wife at any time, with the consent of my trustees, to sell any part of the said furniture and effects, and out of the proceeds of such sale

to replace such of the said articles as shall be sold, damaged or destroyed, with others of the like kind.

Effects to be sold after death of tenant for life.

27. And after the death [*or*, re-marriage] of my said wife, upon trust that my trustees shall sell the furniture and effects aforesaid, in such manner as they shall think proper, and shall stand possessed of the moneys to arise by such sale or sales, upon the trusts hereinafter declared of and concerning the moneys to arise from the residue of my personal estate and effects hereinafter bequeathed. [*Add direction as to inventory, and authority to determine what articles are included in the bequest, Form* 23.]

Power for tenant for life to purchase.

28. I authorise and empower any person or persons for the time being entitled to the possession of the said articles of furniture and household effects to purchase the same from my trustees at a valuation to be made by a valuer to be appointed by my trustees [*or*, at the sum of £——]; And I direct that the purchase-money for the same may be paid at such times, in such manner and with interest at such rate, or without interest, as my trustees shall think fit, and when so paid shall be added to my residuary personal estate.

Household effects for daughters while unmarried and living together; afterwards to be sold and divided.

29. I direct my trustees to permit my two daughters, [*names*], so long as they shall both continue unmarried and shall live together, and after the marriage or death of either of them, the other of them, so long as she shall continue unmarried, to have the use of all my household furniture and household effects not hereinbefore specifically and effectually disposed of, and the consumption, so long as they shall last, of my consumable household stores; And in case my said daughters, while both are unmarried, should cease to live together, or in case both of them should marry or die, then I direct the said household furniture and household effects to be sold, and the produce thereof to be divided equally between my said daughters and those deriving title under them. And in case either of my said daughters should die before me, and leave no child surviving me, then I give the whole of the said furniture and effects or the produce of the sale thereof to my other daughter and those deriving title under her.

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Plate, &c., as heirlooms, in strict settlement, where there is no realty (*u*).

30. I BEQUEATH all the gold and silver plate, books, book-cases, manuscripts, maps, bronzes, medals, statuary, framed and unframed pictures, paintings, drawings, prints, and engravings, antiquities, jewels, minerals, fossils, specimens of natural history, Sèvres, Dresden, and ornamental china, and other articles of curiosity or vertu not otherwise specifically disposed of and of which I shall die possessed, to the said [*trustees*] as heirlooms, [upon trust during the life of my said wife to permit the same to be used and enjoyed by her, and from and after her death] in trust for my eldest son, [*name*], during his life, with remainder in trust for his first and other sons successively, according to priority of birth, in tail male; AND in default of such issue, in trust for my second son, [*name*], for his life, with a like remainder in favour of his first and other sons successively in tail male; AND in default of such issue, in trust successively for every and any other my son or sons, who may hereafter be born, for their respective lives, with like remainders over in favour of their respective first and other sons in tail male; AND in default of such issue, in trust for all my daughters or any my daughter who shall be living at my death, and the issue of any my daughters or daughter who shall have died during my life leaving issue living at my death, absolutely, and if more than one in equal shares, but the issue of any daughter

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(*u*) Forms of bequests of heirlooms by reference to trusts of realty in strict settlement will be found at the end of the common forms of "Devises in Strict Settlement," *post*, p. 613, Form 33.

The forms given here in the text are intended to carry on the settlement of heirlooms apart from real estate, so far as may safely be done. It will be seen that the trusts extend in certain events to great-grandchildren of the testator, but such issue, in order to take, are expressly required to be *in esse* at the death of a son of the testator, who must necessarily be a life in being at the time of the testator's death. Of course, this form may be adapted so as to create successive trusts in favour of female issue. The rule against a "possibility on a possibility" does not apply to personalty: see *Re Bowles*, [1902] 2 Ch. 650; *In re Nash*, [1910] 1 Ch. 1; *In re Clarke's Settlement*, [1916] 1 Ch. 467; and as to limitations or trusts created by any instrument coming into effect after January 1st, 1926, but without prejudice to any other extant provisions as to perpetuities, is abolished by L. P. A. 1925, s. 161.

SPECIFIC BEQUESTS.

or daughters who shall have died during my lifetime, to take only the share to which their mother would have been entitled, if she had survived me; with remainder on failure of all the trusts or limitations hereinbefore contained of the said heirlooms, in trust for [*ultimate legatee*], of, &c., absolutely; AND I direct an inventory to be made of the articles hereinbefore mentioned and specifically bequeathed as heirlooms, and that there shall be two copies of such inventory, both of which shall be signed by each tenant for life of the said trust premises upon receiving possession of the said trust premises, and one of which shall be kept by such tenant for life for the time being, and the other by my trustees; AND I declare that my trustees shall not be concerned during the lifetime of any tenant for life for the time being entitled to the use and enjoyment of the said articles to see to the insurance or preservation thereof, or be liable for any loss or damage that may happen thereto from any cause whatever (*x*).

Inventory.

31. I BEQUEATH unto my wife, [*name*], absolutely, all my ready money (*y*), including money [to an amount not exceeding £——] in the hands of my banker, or my agent.

Bequest of ready money to wife.

32. I GIVE to my son, [*name*] (with whom I have been for many years in partnership in the profession or business of

Share of law books, office

(*x*) Chattels which are settled as heirlooms may be sold and purchased only with an order of the Court: see S. L. A. 1925, s. 67.

(*y*) "Ready money" will generally include money at call at the testator's bankers, but not money in the hands of an agent (*Parker* v. *Marchant*, 1 Phil. 356; *Montresor* v. *Montresor*, 1 Coll. 693), nor money on deposit with testator's bankers and subject to more than twenty-four hours' notice of withdrawal: *Re Wheeler*, [1904] 2 Ch. 66; *Re Price*, [1905] 2 Ch. 55. "Money in hand which I may have for current expenses" has been held to pass dividends due on stock in the funds and money in the hands of an agent: *Vaisey* v. *Reynolds*, 5 Russ. 12; *Fryer* v. *Rankin*, 11 Sim. 55. See *Glendening* v. *Glendening*, 9 Beav. 324.

Ready money, &c.

Where a testator, having at his bank a cash balance and certain share certificates, some inscribed, and the remainder transferable by delivery, bequeathed to A. a moiety of his "property" at the bank, it was held by Chitty, J., in *Re Prater* (36 Ch. D. 473), that a moiety of the cash balance only passed; but this decision was reversed on appeal, and it was

"Property" at bank.

SPECIFIC BEQUESTS.

furniture, papers, &c., to testator's son (with whom he was in partnership).

solicitor), for his absolute use and benefit, all my share and interest in the law books, stationery, office furniture, and books of account, and also in the deeds, documents, papers, and writings, belonging to or in the custody of the said firm at the time of my death. I also give to my said son, for his absolute use and benefit, all the deeds, documents, papers, and writings collected by me in the course of my professional practice, or which shall be in my custody or possession on my sole and separate account at the time of my death, subject nevertheless to the paramount right or claim (if any) of any other person or persons otherwise to regulate and dispose of the custody thereof.

Farming stock to devisee of farm.

33. I BEQUEATH all my farming stock, both live and dead, [growing and other crops (*z*),] and all household and farming effects, and consumable stores and provisions whatsoever, which shall be in or about any freehold or leasehold house and farm, to which at the time of my death I shall be entitled, and which shall then be occupied by me or any of my sons, or by any bailiff, servant, or other person, for my use, to the person who, at the time of my death, shall first become entitled under the trusts or limitations of this my will to the house and farm in or about which the same shall be.

Farming stock, &c., at a particular farm.

34. I BEQUEATH unto [*legatee*], and those deriving title under him, for his and their absolute use and benefit, all the term, estate, and interest to which I shall be entitled at the time of my death in the farm and premises, and all the farming stock, both live and dead, growing and other crops, and household and farming furniture, utensils and effects, and consumable stores and

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held that the bequest included half the certificates: *Re Prater*, 37 Ch. D. 481.

"All my moneys."

As to what passes under a bequest of "all my moneys," or "my money," see *Lowe* v. *Thomas*, 5 D. M. & G. 315; *Re Gliddon*, [1917] 1 Ch. 174; *Re Skillen*, [1916] 1 Ch. 518; *In re Woolley*, [1918] 1 Ch. 33.

"Farming stock."

(*z*) Growing crops will pass under the description of "farming stock": *Re Roose, Evans* v. *Williamson*, 17 Ch. D. 697; overruling on this point *Vaisey* v. *Reynolds*, 5 Russ. 12. See also *Blake* v. *Gibbs*, 5 Russ. 13, n.; *Rudge* v. *Winnal*, 12 Beav. 357.

provisions, which at the time of my death shall be in, upon, or about the farm and premises at ——, now held by me under lease from ——, Esq. SPECIFIC BEQUESTS.

35. I BEQUEATH to [*legatee*], of, &c., all stock in the public funds and other Government securities of Great Britain, of which I shall die possessed. General bequest of stock and Government securities (*a*).

36. I BEQUEATH unto the said [*trustees*], and those deriving title under them, upon the trusts and with and subject to the powers and provisions hereinafter declared of and concerning the same, the sum of £—— Bank Stock, of which I am now (*b*) on this —— day of ——, 19—(*c*), possessed; and also the sum of Bank Stock and New Stock, to trustees.

(*a*) In bequeathing stock legacies it should be distinctly shown whether they are intended to be specific or general, or, in other words, whether the subject of gift is stock then belonging to the testator or any stock that can be procured. The bequest in the text is evidently of the latter description; and, in general, the intention is best expressed by framing the legacy in this manner, because by making it specific the testator is subjected to the necessity of altering his will at every change of his securities, or of adding a proviso for ademption as in Form 36. Explicitness on the point is important to prevent litigation. If the legacy is to be specific it should be expressed as in Form 35. Suggestion as to stock legacies.

A gift of "all the stocks . . . and other securities standing in my name at my decease" was held not to include foreign bonds to bearer: *Re Mayne,* [1914] 2 Ch. 115.

(*b*) As to the force of the word "now," see *Doe* d. *York* v. *Walker,* 12 Mee. & W. 591; *Anther* v. *Anther,* 13 Sim. 422; *Cole* v. *Scott,* 12 Jur. 591; *Hutchinson* v. *Barron,* 6 H. & N. 583; *Wagstaff* v. *Wagstaff,* 8 Eq. 229; *Everett* v. *Everett,* 7 Ch. D. 428; *Dickinson* v. *Dickinson,* 12 Ch. D. 22; and *Re Portal and Lamb,* 30 Ch. D. 50, which decides that sect. 24 of the Wills Act, 1837, still leaves open, as a matter of construction, the question whether the testator intended to pass property under the specific or residuary gift in his will. See also *In re Champion,* [1893] 1 Ch. 101; 62 L. J. 372; *In re Hardyman,* [1925] 1 Ch. 287.

(*c*) The mention of the date will prevent any question from arising as to whether the word "now" means the date of the execution of the will or the date of the testator's death, from which the will speaks. This question will not arise if there is an ademption clause, which should always be inserted in the case of a specific legacy of this nature, in the absence of instructions to the contrary. Stock in the funds is not money; and

SPECIFIC BEQUESTS.

£——, $2\frac{1}{2}$ per cent. Consolidated Stock (*d*) [part of a larger sum of like stock], this day standing in my name.

Proviso in case of ademption.

37. PROVIDED ALWAYS, that if I should not be possessed of the whole or part of the said stock at the time of my death, then in lieu of the whole, or so much thereof as shall be deficient, I bequeath to the said [*legatee*] [*or*, to the said trustees], the sum of £—— for every 100*l*. such stock, and so in proportion for any less amount than 100*l*. [to be held by them upon the trusts aforesaid], such sum to be payable in priority to any general pecuniary legacy bequeathed by this my will.

Shares in a company. Provision in case of ademption.

38. I BEQUEATH to [*legatee*], absolutely, five of my shares in the —— Company; AND if I should not be possessed of so many shares at the time of my death, I bequeath to him, in lieu of each deficient share, the sum of £—— sterling.

Policies of life insurance, &c. (*e*).

39. I BEQUEATH unto [*legatee*], absolutely, all policies of insurance on my own life [or any other life or lives] to which I shall be entitled at the time of my death, and all moneys, bonuses, and additions secured by or to be received in respect of the same policies respectively. [AND I declare that any moneys which shall become payable in respect of any of the said policies in my lifetime, and shall not be actually received by me, shall be included with them in this bequest.]

Legacies of stock are not pecuniary.

legacies of stock, whether specific or general, are not properly within the description of "pecuniary legacies." Thus, where a testator directed that the duty on the pecuniary legacies given by his will should be paid out of his general estate, the direction was held not to apply to a general bequest of Consols: *Douglas* v. *Congreve*, 1 Keen, 41. See *Gaskin* v. *Rogers*, L. R. 2 Eq. 284.

(*d*) As to the description of this stock, see the National Debt Conversion Act, 1888, s. 2, sub-s. 4.

As to effect of sect. 27 of Wills Act, 1837, on gift of all testator's stock in a certain company, where the testator is owner of part, and has a general power of appointment over the remainder, see *Re Doherty Waterhouse*, [1918] 2 Ch. 269.

(*e*) It may be advisable to appoint the legatee of the policies to be special executor in regard to them: see *ante*, p. 463, Form 7.

SPECIFIC BEQUESTS.

40. I BEQUEATH to [*legatee*] all the principal and interest moneys which shall be owing to me at my death on the bond of [*obligor*], and also the said bond and the full benefit thereof (*f*). [AND in case there should not be owing on the said bond at my death for principal, or principal and interest, the full sum of £——, I direct that the deficiency shall be made up to the said [*legatee*] out of my personal estate.]

Bond debt.

Provision in case of payment.

41. I BEQUEATH to [*legatee*], absolutely, all the principal and interest moneys which at the time of my death shall be owing or accruing due to me by [*mortgagor*], of, &c., on a mortgage for the sum of £—— [and further advances], of [leasehold] hereditaments [and property], situate at ——. AND in case the said mortgage debt of £——, or any part thereof, should be paid off in my lifetime, then, in lieu thereof, I give to the said [*legatee*] the sum of £——, or such smaller sum as shall be equal to the amount so paid off, to be paid to him out of my general personal estate.

Mortgage debt (*g*).

Substitution of a pecuniary legacy in case of the mortgage being paid off in the testator's lifetime.

42. I BEQUEATH to [*legatee*] the sum of £——, and I declare that the sum of £—— lent by me to him, on his bond, or so much thereof as shall remain unpaid at my death, shall be released to him in part satisfaction of this legacy, but that he shall not be accountable for any arrear of interest due at my death, nor shall any such arrear go in reduction of his said legacy; AND I direct that the said bond shall be delivered up to be cancelled (*h*); AND

Legacy.

Bond debt to go in satisfaction of it.

(*f*) A gift of a bond, or of the money owing on a bond, will, unless restrained by the context, carry arrears of interest due at the testator's death: *Harcourt* v. *Morgan,* 2 Keen, 274; *Kent* v. *Tapley,* 11 Jur. 940. And a bequest of a mortgage seems to admit of the same construction. But a bequest of the "sum of 200*l.*" secured by a mortgage, or of "300*l.* due upon a bond," will not pass arrears of interest: *Roberts* v. *Kuffin,* 2 Atk. 112; *Hawley* v. *Cutts,* 2 Freem. 24. It may be advisable to appoint the legatee of the bond special executor in respect thereof: see *ante,* p. 463, Form 9.

Arrears of interest on debt.

(*g*) The legatees of the mortgage debt may, if desired, be made special executors in respect thereof (*ante,* p. 463).

(*h*) Where the testator released and forgave to A. B. the sum of 500*l.* owing on his bond, and directed the bond to be delivered up to him to

Lapse in case of forgiveness of a debt.

SPECIFIC BEQUESTS.

in case he die before me, I release his estate from the amount that shall be due on the said bond.

Release of debt.

43. I RELEASE the debt of £—— and interest owing to me by [*debtor*] on his bond, whether he survive me or not (*i*); AND I direct that the said bond shall be delivered up to be cancelled.

Bequest of amount of mortgage debt to debtor (*k*).

44. I BEQUEATH to [*debtor*] the amount of the principal and interest moneys which, at my death, shall be owing from him to me, on the mortgage security now held by me; AND I direct that a proper re-assignment of the property mortgaged shall be executed in his favour [at the expense of my estate] by my executors; AND in case he die before me, I release his estate from the amount that shall be due on the said mortgage security.

Release of all debts.

45. I RELEASE to [*legatee*], whether he survives me or not, all principal and interest moneys whatsoever which may be owing

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be cancelled, it was held that the will did not import a general release; and that the benefit of the release lapsed by the death of the legatee before the testator: *Izon* v. *Butler,* 2 Price, 34.

(*i*) A testamentary release of a debt is subject to the claims of the testator's creditors; and being at law a specific legacy (*Re Wedmore,* [1907] 2 Ch. 277), is chargeable with duty. It is advisable, where such a course is consistent with the testator's policy, to release the debt by an instrument taking effect in his lifetime, which release will be effectual at law, and will exempt the amount of the debt from probate and legacy duty, if the release was made three years prior to the testator's death; otherwise duty would be payable under the Finance Act, 1894, s. 2 (1) (c), and Finance (1909-10) Act, 1910, s. 59. As to the extinction of a debt by the appointment of the debtor as executor, see *Strong* v. *Bird,* L. R. 18 Eq. 315; *Re Bourne,* [1906] 1 Ch. 697; *Re Pink,* [1912] 2 Ch. 528; and 54 Sol. J. 247; *Re Goff,* 58 Sol. J. 535.

As to abatement where debt is released.

Where a testator gives to his debtor the amount of the debt, that is a pecuniary legacy, liable to abatement if the assets are deficient. But a release of the debt in express terms is not subject to abatement, except as a specific gift: *Re Wedmore, sup.; In re Whitehead,* [1913] 2 Ch. 61.

The bringing of debts into hotchpot was discussed in *Re Clarke,* [1924] W. N. 75, in which case the Court held a legatee to be entitled to any testamentary excess over his own debts, and to be forgiven any debts which exceeded his own benefits under a will, if the will contained direct words of gifts making release of such debt possible.

(*k*) See L. P. A. 1925, s. 115.

to me from him at the time of my death; AND I direct that all or any bonds, bills, notes, or other securities for any such moneys, shall be released and delivered up to the said legatee, or to his representatives, as the case may be.

Release of arrears of interest, and direction for payment of debt by instalments.

46. I RELEASE to [*legatee*], whether he survives me or not, all interest and arrears of interest which may be owing to me by him at the time of my death on the principal sum of £—— owing to me by him on his bond [*or*, on any principal moneys whatsoever which may then be owing to me by him]; AND I direct that my said executors shall accept payment of the said principal sum [*or*, sums] by yearly instalments, not exceeding £—— each, the first of such instalments to be paid on or before the expiration of twelve calendar months after my death.

Debt to be deducted from legacy.

Proviso as to legatee's bankruptcy.

47. WHEREAS my son, [*name*], now owes me the sum of £——; Now I hereby bequeath to my said son the sum of £——, but so that any money he may owe me at my death shall be deducted therefrom; PROVIDED ALWAYS, that if at the time of my death my son is an undischarged bankrupt, my executors shall retain so much of the said legacy as shall be equal to the full amount proveable as a debt in the bankruptcy, and the part so retained shall fall into and form part of my residuary estate (*l*).

(*l*) In an ordinary case the earlier part of this form is merely declaratory of the right of an executor to retain from the legacy payable an amount equal to the debt owing by the legatee, whether the benefit accrues by original or derivative title: *Re d'Acre*, [1915] 2 Ch. 480; [1916] 1 Ch. 344; but if the debtor-legatee should be bankrupt at the death of the testator an executor would have no such right, apart from express provision (*Cherry* v. *Boultbee*, 4 My. & Cr. 442; 2 Keen, 319; *Hodgson* v. *Fox*, 9 Ch. D. 673; *Re Orpen*, 16 Ch. D. 202; followed in *Re Peruvian Railway Construction Co., Ltd.*, [1915] 2 Ch. 144, 442); and should the bankruptcy occur after the testator's death, the executor by proving would lose such right: *Stammers* v. *Elliott*, L. R. 3 Ch. 195. As to the principle on which the right of set-off is based, see *National Live Stock Insurance Co.* v. *National General Insurance Co.*, [1917] 1 Ch. 628.

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BEQUESTS OF BUSINESS (*m*).

Stock in trade and goodwill.

1. I BEQUEATH unto [*legatee*] absolutely all the stock-in-trade, fixtures, machinery, plant, utensils, and effects employed in my trade or business of a ——, and also the goodwill of the said trade or business, [And all my leasehold interest in the messuage, manufactory, offices, and buildings situate at —— aforesaid in which the said trade or business is carried on or used for the purposes of the same,] but not any money or debts which shall be owing to me in respect of the said trade or business. [*Or*, and also the benefit of all contracts subsisting in respect of the same trade or business, and all book and other debts and moneys owing to me in respect of the same, or standing to the credit of my business account at my bankers at my death; PROVIDED ALWAYS, that the said [*legatee*] shall to the satisfaction of the [*general*] executors of this my will sufficiently indemnify my general estate from all debts and liabilities owing or incurred by me in respect of my said trade or business, and, if they shall so require, shall enter into a bond or covenant in that behalf at the cost of my general personal estate.]

Exception of credits.

[Variation including contracts and credits (*n*).]

Proviso for indemnity.

Appointment of successor in partnership, and bequest of share therein (*n*).

2. IN EXERCISE of the powers vested in me under or by virtue of the articles of partnership of the firm of —— and Co., in which I am a partner, and of all other powers me in this behalf enabling,

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(*m*) The place in which business clauses should be inserted in a will is a question of discretion and convenience, according to the circumstances of the particular case. Several of the forms here given may be accompanied by an appointment of the legatee of the business as special executor: see *ante*, p. 463. Where this is done, it may sometimes be convenient to commence the will with the appointment of the special executor, and then immediately to proceed to a bequest of the business with any ancillary clauses which may be required, and then to go on to appoint general executors and to dispose of the general estate by specific and pecuniary bequests, &c., and ultimately by a bequest of the residue; the instrument will thus be divided into two distinct parts, each dealing separately and completely with distinct subject-matter. If this course is not adopted, the appropriate place for the insertion of bequests of business with ancillary provisions seems to be at the end of the specific legacies.

Other provisions relating to business will be found in the precedents.

(*n*) As to the necessity of expressly mentioning book debts, &c., if intended to be included, see *Re Deller's Estate* (1888), W. N. p. 62; and as to mentioning the bank balance, see *Re Haigh*, 51 Sol. J. 343.

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I hereby appoint my son [*name*], to be my successor in the said partnership business [*or*, I hereby introduce my son [*name*] into the said partnership (*o*)], with all rights, powers, privileges, and authorities, which I am in anywise enabled to confer upon him as such successor, subject, nevertheless, to the provisions of the said articles of partnership, and to any other agreement for the time being in force in respect of the said partnership business; AND I bequeath unto my said son [*name*] absolutely all my share and interest in the said partnership business and in the capital, stock-in-trade, property, goodwill, credits, profits, and effects thereof, and all arrears of profits and other moneys owing to me by the said firm; [*or*, but not any arrears of profits or other moneys owing to me up to the day of my death by the said firm, which shall be paid by the said [*son*] to the [*general*] executors of this my will as and when the same shall be received by him;] he, the said [*son*], sufficiently indemnifying my general estate from all debts and liabilities in respect of the said partnership business.

Power for trustees to carry on business forming part of the testator's general personal estate (*p*).

3. I HEREBY authorise my trustees to continue and carry on for such period as they shall think fit [not exceeding —— years from the time of my death], the trade or business of a —— now carried on by me, and to employ therein the whole or such part as they shall think necessary or expedient of my personal estate after satisfaction and payment of my debts and of the legacies given by this my will, or any codicil thereto; [*or*, and to employ therein all the capital which at the time of my death shall be employed therein [and such additional capital as they may think it necessary

(*o*) The appointment of a successor in the partnership should follow the terms of the power contained in the article.

(*p*) As to the liability of executors or trustees carrying on a business, whether alone or in partnership, under the powers of a will, see Byth. & Jarm. 4th ed. vol. iv. p. 420, n.; *Re Oxley*, [1914] 1 Ch. 604; 83 L. J. Ch. 442; *Re East*, [1914] W. N. 187. Executors carrying on their testator's business are not "partners" within the meaning of sect. 1 of the Partnership Act, 1890: *Re Fisher*, [1912] 2 K. B. 491. The Public Trustee may not accept a trust which involves the carrying on of a business (P. T. Act, s. 2 (4)), except as provided in the P. T. Rules, 1912, r. 7. A power to postpone the sale of a business gives power to carry it on indefinitely (*Re Crowther*, [1895] 2 Ch. 56), unless a contrary intention is implied: *Re Smith*, [1896] 1 Ch. 171.

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or expedient to advance out of my general estate];] with power for my trustees to manage the same in all respects at their uncontrolled discretion, and to employ from time to time such managers or agents at such salaries or remuneration as they shall think fit, and to delegate to any such managers or any other persons or person all or any of the powers and authorities given to or vested in them in relation to the said trade or business, and generally to conduct and carry on the same in all respects as if they were absolutely the owners thereof; AND I declare that my trustees shall not be liable for any losses, costs, charges, expenses, claims, or demands arising in respect of the said trade or business, but shall be fully indemnified therefrom out of my general estate (*q*). AND I declare that all profits and interest which may accrue to my estate from the carrying on of the said business, and from the employment therein of my personal estate, or any part thereof [*or*, of my capital [or of any part of my general estate so advanced as aforesaid]], shall be added to and considered and applied as part of my residuary estate.

Profits to fall into residue.

Discretionary power to trustees to carry on business;

4. I HEREBY authorise my trustees in their discretion to carry on or join in carrying on my trade or business of —— either alone, or in partnership with any person or persons with whom I may be a partner at the time of my death, or who may thereafter be admitted into partnership by my trustees under the provisions in that behalf hereinafter contained, for such period as they shall think fit, [*or*, until some one of my said sons shall attain the age of twenty-one years and be desirous to take thereto, or all my sons shall die under that age or refuse to take thereto on attaining that age], or if they shall deem it expedient to discontinue the same; AND, from time to time, to enter into any new agreement or arrangement with any such partner or partners by way of substitution for, or addition to or modification of, any subsisting articles, agreements, or arrangements, and to extend, diminish, or alter or concur in extending, diminishing, or altering the said trade or business as to my trustees may seem expedient; AND, if they shall think proper, upon the expiration of the term for the

to renew partnership;

(*q*) As to the rights of trustees to indemnity, and the rights of business creditors, see *Re Frith*, [1902] 1 Ch. 342. And as to persons injured by the acts of trustees, see *Re Raybould*, [1900] 1 Ch. 199.

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time being in any such partnership as aforesaid, to renew such partnership for such further terms or term [not extending beyond the period during which I have authorised them to carry on the said trade or business] as to my trustees shall seem expedient; AND to admit or concur in admitting into any partnership for the time being subsisting in relation to the said business, any person or persons, upon such terms, and with or without premium, as my trustees shall think proper [but without prejudice to the right or option of admission hereinafter given to my said sons]; AND to employ in the said business all the capital which may be invested therein at the time of my death, and all arrears of profits then belonging to me and left in the said business, and the growing profits thereof which shall fall to my share after paying all the expenses of carrying on the same, Or from time to time to add to and increase my said capital, [but so that such additions shall not at any one time exceed the amount of £—— in the whole,] or to withdraw from the said business and from the said profits arising therefrom any sum or sums which they shall think proper, and apply the same at once upon the trusts hereinafter declared of my residuary estate: AND I hereby authorise my trustees either alone, or in concurrence with any such persons or person as aforesaid, for the purpose of carrying on any such business as aforesaid, to hire and employ such persons and with such salaries as they shall think proper, and to enter into such contracts and engagements respecting the said business as they shall think reasonable, [and to adjust and settle all accounts and transactions relating thereto, in which I shall be, or my estate shall after my death become, interested; and to compromise, or pay, allow, suspend, waive, and compound any debts, claims, or demands relating to the said business, and which may be owing from or to me, or be claimed or made against or on behalf of my estate, upon such evidence, whether strictly legal or not, as they shall deem just, and to refer any disputes concerning the same to arbitration (*r*),] and to make any sale or sales upon credit, and generally to transact all matters and concerns respecting the said business, and to do or cause to be done all acts and things relative thereto, in the same manner in all respects as if they were absolutely entitled to or interested in the premises,

to employ all capital employed at testator's death;

to withdraw capital.

Powers of management.

To settle accounts and compound debts, &c.

(*r*) The words in brackets may be omitted, if desired, in reliance on the provisions of the T. A. 1925, s. 15.

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or a share therein, as the case may be, without being responsible for any loss occasioned by any such act or thing: And I direct that any losses, charges, and expenses of and incident to the carrying on of any such business as aforesaid, or my share therein, as the case may be, shall be borne, paid, and defrayed, in the first instance, out of my capital therein and the profits thereof, and, if they shall be insufficient, then out of my residuary estate; And the profits and increase of such business, or my share therein, shall be added to and considered and applied as part of my residuary estate.

Option to sons successively, at twenty-one, to take over the business;

5. Subject to any provisions in that behalf contained in any articles of partnership or agreements which may be subsisting in respect of the said business at the time of my death, my trustees shall place such one of my sons as shall first or alone attain the age of twenty-one years, and exercise his option (such option to be declared in writing within six calendar months after his attaining that age) to succeed to my said business (each and every of my sons who shall attain that age taking a successive prior right, according to his priority of birth, to enter into the said business, in case no elder son shall have attained that age and entered the same), into the full and complete possession of my said business and assets, or my share and interest therein, and make over to such son all securities, debts, goods, effects, and premises belonging to me and used or employed in carrying on the same, Provided that my son, who shall so take to the said business, or my share therein, shall give security, by bond or otherwise, at his own expense, [*or*, at the expense of my residuary estate], to the satisfaction of my trustees, for the payment, at such times and by such instalments as to my trustees shall seem proper, of the whole amount or value of my capital in the said business at the time of his succeeding thereto (without regard to the value of the goodwill of the said business), with interest on such amount or value at the rate of —— per cent. per annum, such amount or value to be settled by two valuers, one to be appointed by each party, or by the umpire of such valuers; And I direct that the moneys so to be received from any of my said sons shall be held upon the trusts hereinafter by me declared of my residuary estate; And that at the request of such son my trustees shall indorse upon such bond or security a memorandum

on giving security.

of satisfaction thereof to the amount of the value of such son's share in my residuary estate under this my will or any codicil thereto.

Power to executors to arrange for admission of testator's sons into the business.

6. My executors [trustees] may make any arrangements they may think proper with the partners or partner for the time being of the firm of ——, of which I am a partner, for the admission as a partner or partners of any son or sons of mine, for the whole or any part of my share in the business; and may either sell my share in the business to the son or sons so admitted, on such terms as may be reasonable; or may allot such share to him or them in satisfaction, wholly or in part, of his or their share or shares of my residuary estate; And may allow the whole or any part of the purchase-money to be paid by any such son to remain as a loan to him, to be repaid, with interest thereon, at the rate of 5 per cent. per annum, by such instalments, at such times, and in such manner as shall be agreed upon; Provided that the repayment of such instalments and interest shall be secured by the bond or covenant of such son.

Power to convert business into a limited company.

7.—(i) My trustees may at any time, at the expense of my estate, convert or join in converting the said business into a company limited by shares, in such manner as they may think fit, and may, at the like expense, promote or assist in promoting a company for taking over the said business; And may sell or transfer the said business, and the capital and assets and goodwill thereof, or any part thereof, to such company, or to any company having for its objects, or one of its objects, the purchase of such a business, in consideration in either case, wholly or in part, of ordinary shares wholly or partially paid up of any such company, or wholly or in part of debentures, debenture stock, or bonds or preference shares of any such company (*s*), and as to the balance (if any) in cash, payable immediately or by any instalments, with or without security; And my trustees, or any of them, may act as directors, manager, or secretary, or hold any other office in relation to any

(*s*) The Court has no power to sanction such an arrangement as this (see *Re Morrison,* [1901] 1 Ch. 701); but where the testator has held shares in a company which is reconstructed, the Court may authorise his trustees to take shares in the new company: *Re New,* [1901] 2 Ch. 534.

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such company without being liable to account for any remuneration received by them or him as such, and may enter into any arrangements as to any such company, or as to the sale or transfer of the said business, and the assets thereof, to any such company (whether before or after the incorporation thereof) as my trustees may think fit, notwithstanding that any such trustees or trustee may be a promoter or promoters of any such company, or may be interested or concerned therein, or intended so to be, as a shareholder, director, manager, secretary, or in any other capacity.

(ii) Any such sale or transfer as aforesaid may, if deemed necessary or expedient, be effected by my executors in that character, in which case they shall have the like powers and authorities in relation thereto as are hereinbefore given to my trustees.

(iii) All shares, bonds, debentures, debenture stock, and moneys received as the consideration for any such sale or transfer as aforesaid, shall be vested in and held by my trustees upon the trusts hereinbefore declared of my residuary estate, and the investments and premises representing the same.

Power to leave capital in the business as a loan.

8.—(i) My trustees may, if they think fit, allow the whole or any part of the amount which from the partnership accounts shall appear to be due to my estate for my share and interest in any business in which I may be a partner at my death, to remain in such business as a loan for such period as they may think fit, at such rate of interest, either fixed or varying with the profits of the business, and upon such other terms as may be deemed expedient; And may from time to time renew or continue such loan wholly or partially, and may agree to any alteration or modification of the terms thereof, provided that the repayment of the capital, with interest thereon as agreed, shall be secured by the bond or covenant of the person or persons to whom the loan shall be made, either with or without any other security for the same, as my trustees shall think fit.

(ii) My trustees may exercise this power, notwithstanding that they or any of them may be interested as partners or a partner in such business, or may be beneficially interested under this my will.

Power to executors to become

9. My executors may exercise, at their discretion, the option given to them by the articles, dated, &c., under which my part-

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nership in the firm of —— is now carried on, or any option which may be available in that behalf at my death, of becoming sleeping [limited] partners in such firm; AND I declare that in that event their share from time to time in the capital of the said firm shall be deemed to form part of the capital of my residuary estate, and their share from time to time in the profits thereof and interest on capital, as from the last day immediately preceding my death, appointed by the said articles of partnership for taking the annual general accounts of the partnership business, shall be considered and applied as income of my residuary estate.

sleeping or limited partners.

10. I DIRECT my executors, as soon as conveniently may be after my death, to concur with other persons interested in winding up the business of ——, now carried on by the firm of —— and Co., of which I am a partner, and to realise my share and interest therein; AND for that purpose I authorise my said executors to enter into, make, execute and do all such agreements, arrangements, assurances, and things as they shall in their discretion think reasonable and expedient, having regard to the provisions of the articles of partnership under which the business of the said firm is carried on, or any agreement for the time being subsisting in modification thereof or substitution therefor, without being answerable for any loss which may be occasioned by any such agreement, arrangement, assurance, or thing.'

Powers for executors to wind up testator's partnership business. Short form (*t*).

11.—(i) I DIRECT my executors to concur with other persons interested in winding up the business of ——, now carried on by the firm of —— and Co., in which I am a partner, or any business in which I may be engaged as a partner at the time of my death; AND for that purpose I authorise my executors to adjust and settle all accounts and transactions relating to the said partnership business and to accept any statements of account either with or without the production of vouchers or other evidence, and to ascertain the amount or value of any share and interest in the said

The same. Full form (*t*).

(*t*) This form, so far as the authority given is concerned, is merely declaratory, as by T. A. 1925, s. 15, powers of arranging, compromising, &c. are given to trustees, executors and administrators which are generally sufficient for winding up an ordinary business. The provisions of this form, however, are more ample than the statutory powers.

BUSINESS. business either upon the footing of the articles of partnership under which the same is carried on or any agreement for the time being subsisting in modification thereof or substitution therefor, or upon the footing of any other agreement or arrangement, on such terms, and in such manner as may be agreed upon between my executors and the surviving partners or partner and other persons (if any) interested in the said business; with full power to compromise, compound, abandon, submit to arbitration, or otherwise settle or concur in compromising, compounding, submitting to arbitration, or otherwise settling all or any rights or liabilities as between my estate and the surviving partners or partner or other persons (if any) interested in the said partnership business, and creditors of, or debtors to the firm, or persons under contract therewith; and in particular to leave to the surviving partners or partner, or any of them, or to any agents or other persons, the collecting or gathering in of the outstanding debts of the firm, and to sell or dispose of my share by valuation, agreement, or otherwise, on such terms and in such manner as my executors shall think fit; AND to accept or concur in accepting payment of my share therein, or of any estimated, agreed, or awarded sum in satisfaction thereof, by such instalments, on such terms, and generally in such manner as they shall think fit, and either with or without taking security for the same; AND to postpone such winding up of the said business, and ascertainment and disposal of my share therein for such period as they shall deem proper or expedient; AND to allow the whole or any part of my share in the capital of the said business to remain as a loan to the persons or person for the time being carrying on the same, for such time, upon such security, personal or otherwise, at such rate of interest, either fixed or varying with profits, and on such terms and in such manner as my executors shall think fit; AND generally to act in relation to such business as they shall in their uncontrolled discretion think proper or expedient, and as if they were the absolute owners thereof, without being answerable for any loss which may be occasioned thereby.

(ii) My executors may exercise any power or discretion hereinbefore given to them, notwithstanding that they, or any of them, may be interested as partners or a partner in the said business, or may be beneficially interested under this my will.

GENERAL PECUNIARY BEQUESTS (*u*).

PECUNIARY BEQUESTS.

Legacies to wife: one to be paid immediately.

1. I GIVE to my wife, [*name*], the sum of £——, to be paid immediately, or as soon as may be, after my death for her immediate use, and in priority to all other bequests hereby made; I also give to her the sum of £——, to be paid within twelve months after my death, with interest at the rate of 5 per cent. per annum from my death, payable quarterly in the meantime (*x*).

Pecuniary legacies to several, with provision against lapse.

2. I BEQUEATH the following legacies [all free of death duties] (*y*), namely, to A. B., of, &c., the sum of £——; to C. D., of, &c., the sum of £——; to E. F., of, &c., the sum of £—— [but if any of such legatees die in my lifetime leaving issue surviving me, then I give the legacy hereinbefore bequeathed to him or her to his or her representatives to be disposed of as part of his or her personal estate].

Legacies to trustees; to one of the trustees.

3. I BEQUEATH to each of my said trustees and executors, who shall prove my will, the sum of £—— [free of death duties], as an acknowledgment for his trouble in executing the office of trustee and executor of my will; AND to the said [*trustee*]

(*u*) See Robbins & Maw, 4th ed., 295, as to the distinction between general and specific legacies. If legacies are intended to be given free of duty, it should be so stated either in the gift itself or by a general clause as in Form 46.

(*x*) It has been held that an immediate pecuniary legacy to the testator's widow has priority over other legacies (*Re Hardy*, 17 Ch. D. 798; 50 L. J. 241); but this decision was dissented from in *Re Schweder's Estate*, [1891] 3 Ch. 44, and in *Cazenove* v. *Cazenove*, 61 L. T. 115. As to interest on such a legacy, see *Re Whittaker*, 21 Ch. D. 657; *Re Crane*, [1908] 1 Ch. 379; *Re Ramsay*, [1917] 2 Ch. 64.

(*y*) The gift of a legacy "free of legacy duty" was held not to exonerate the legatee from payment of the French Mutation duty in *Re Scott*, [1915] 1 Ch. 592: see also *In re Grosvenor*, [1916] 2 Ch. 375, to which was applied this case; and *In re de Gamnery*, [1912] 2 Ch. 622. As to whether "free of legacy duty" refers to duties imposed at the date of the testator's death, and not to duties subsequently imposed, see *Re Snape*, [1915] 2 Ch. 179; *In re Stoddart*, [1916] 2 Ch. 444; *In re Wedgwood*, [1921] 1 Ch. 607; *In re Duke of Sutherland*, [1922] 2 Ch. 786; *In re Beecham*, [1924] W. N. 21; *In re Sargon*, [1925] 1 Ch. 31; *Re Palmer*, [1916] 2 Ch. 391; *Re Hatch*, [1916] W. N. 240.

PECUNIARY BEQUESTS.

individually the sum of £——; whether or not he shall prove my will, or accept the trusts thereof (*z*), in addition to the sum of £—— hereinbefore bequeathed to him as executor and trustee thereof.

Direction for purchase of stock to be held on trust.

4. I DIRECT my trustees or trustee to purchase, within a year from my death, or to set apart from such funds as I may be possessed of, the sum of £—— $2\frac{1}{2}$ per Cent. Consolidated Stock, and be possessed thereof upon the trusts hereinafter declared of the same.

Demonstrative legacy.

5. I BEQUEATH the sum of £—— to [*legatee*] to be paid out of the proceeds of sale of a sufficient part of the sum of £—— $2\frac{1}{2}$ per Cent. Consolidated Stock on this day standing in my name;

Proviso as to ademption.

[PROVIDED ALWAYS, that if at the time of my death there shall not be any, or not be a sufficient amount of such stock standing in my name to provide for payment of the said legacy of £——, I direct that the whole or the deficient part of the same sum shall be made good and paid out of my residuary personal estate (*a*)].

Legacy to avoid covenant to settle.

6. I BEQUEATH to [A. B.], the wife of [C. B.], of, &c., the sum of £——, and I declare that this sum shall not be subject to the trusts declared by her marriage settlement of her after-acquired property (*b*).

As to legacies to trustees.

(*z*) The presumption is that a legacy given to a person appointed executor is annexed to his office (*Re Appleton*, 29 Ch. D. 893), except in the case of a *residuary* gift (*Griffiths* v. *Pruen*, 11 Sim. 202; *Christian* v. *Devereux*, 12 Sim. 264; *Re Maxwell*, [1906] 1 Ir. R. 386), unless the testator has shown, by positive expression, that the legacy was intended to be independent of the office: *Read* v. *Devaynes*, 3 Br. C. C. 95; *Stackpoole* v. *Howell*, 13 Ves. 417; *Hanbury* v. *Spooner*, 5 Beav. 630.

(*a*) The words in brackets are merely declaratory, and may be omitted; a demonstrative legacy is not liable to ademption: *Mullins* v. *Smith*, 1 Dr. & Sm. at p. 210; Roper on Legacies, 4th ed. at p. 198; *Re Walford*, [1912] 1 Ch. 219, at p. 228.

(*b*) See, as to this provision, *Scholfield* v. *Spooner*, 26 Ch. D. 94, referred to in *In re Plumptre's Marriage Settlement*, [1910] 1 Ch. 612. This bequest is framed on the assumption that the covenant or agreement to settle after-acquired property excluded property so bequeathed.

PECUNIARY BEQUESTS.

Legacies to clerks, servants, &c.

7. I GIVE to such of my clerks, [*names*], as shall be in my service or employ at the time of my death, the sum of £—— apiece, to be paid at the end of three calendar months next after my death. I give to each of the servants who shall be in my service at the time of my death, and shall have lived with me continuously three years or upwards, the amount of two years' wages; AND to each of the other servants who shall be in my service at the time of my death, and shall have lived with me continuously one year or upwards, the amount of (*c*) one year's wages, in addition to what may be due and owing to them respectively on account of wages at the time of my death (*d*).

(*c*) See *Re Earl of Sheffield,* [1911] 2 Ch. 267; *In re Forrest,* [1916] 2 Ch. 386; *In re Drake,* [1921] 2 Ch. 99.

As to legacies to servants.

(*d*) A legacy to servants applies to such only as spend their whole time in the testator's service, and not to one who is occasionally employed only, such as a coachman supplied by a jobmaster (*Chilcott* v. *Bromley,* 12 Ves. 114), or a boy occasionally employed to clean boots and knives, &c.: *Thrupp* v. *Collett,* 26 Beav. 147. But a farm bailiff is a servant within the meaning of such a gift: *Bulling* v. *Ellice,* 9 Jur. 936; *Armstrong* v. *Clavering,* 27 Beav. 226. The expression "domestic servants" will not include outdoor servants not boarded by the testator, as gardeners, gamekeepers, stable servants, &c.: *Ogle* v. *Morgan,* 1 De G. M. & G. 359. See *Howard* v. *Wilson,* 4 Hagg. 107; *Re Lawson,* [1914] 1 Ch. 682; 58 Sol. J. 320; nor farm labourers: *Re Forrest,* [1916] 2 Ch. 386; this not followed in *In re Drake,* [1921] 2 Ch. 105.

Generally, under gifts to servants, those only can take who were in the testator's service when he died: *Jones* v. *Henley,* 2 Ch. Rep. 162; *In re Marcus* (1887), W. N. 168; but see *Parker* v. *Marchant,* 1 Y. & C. C. C. 290; *Re Sharland,* [1896] 1 Ch. 517. A temporary absence at the time of the testator's death will not disentitle a servant to the benefit of the legacy: *Herbert* v. *Reid,* 16 Ves. 486. But a servant who has permanently quitted the testator's service either voluntarily or by dismissal from whatever cause, or even by wrongful dismissal, is not entitled to participate in a legacy to servants "living with me at my death": *Darlow* v. *Edwards,* 1 H. & C. 547; *Re Serres' Estate,* 10 W. R. 751; *Re Hartley's Trusts,* 26 W. R. 590. As to a "chauffeur" being a "manservant," see *Re Bell,* [1914] W. N. 89.

It has been held that under a gift to the testator's *two* servants living with him at his death, a third servant engaged after the date of the will was entitled: *Sleech* v. *Torrington,* 2 Ves. sen. 560.

A legacy of a year's wages is confined to such servants as are hired by the year: *Booth* v. *Dean,* 1 My. & K. 560; *Blackwell* v. *Pennant,* 9 Hare,

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8. I BEQUEATH to my trustees the sum of £——, to be held upon the trusts hereinafter declared concerning the same.

Legacy in trust. £—— to be paid to a widow by weekly instalments; surplus for her burial.

9. I BEQUEATH to my trustees £——, upon trust thereout to pay or apply, for the benefit of [*name*], widow, the sum of —*s.* weekly, [monthly,] during her life, or until such sum shall be exhausted; such payment to commence from the day of my death (the income (if any) of the said sum of £—— to be added to the capital and to be applicable as part thereof): AND after her death to apply all or a competent portion of the surplus (if any) for her burial, and to add the ultimate surplus (if any) to my residuary personal estate.

Allowance for son.

10. I BEQUEATH to my trustees the sum of £——, to be held in trust for my son, [*name*], and to be paid to him by way of allowance during his minority in such portions, or to be otherwise applied for his benefit in such manner, as my trustees shall think proper; AND in case of all or any part of such sum not being applied as aforesaid during my said son's minority, such sum, or the unapplied part thereof (as the case may be), shall be paid to him on his attaining the age of twenty-one years, and in case of his dying before me, or under that age, shall form part of my residuary personal estate. AND I direct that the income (if any) to arise from the said sum of £——, or any part thereof, shall be added to the capital and be applicable in all respects as part thereof.

Legacy to a creditor (*e*).

11. I BEQUEATH to [*legatee*] the sum of £——, to be paid to him in addition to the amount of any debt I may owe to him at my death.

551; *In re Ravensworth*, [1905] 2 Ch. 1, distinguished in *Re Earl of Sheffield*, [1911] 2 Ch. 267.

As to what are "wages" as distinguished from "commission," see *Re Smith*, [1915] W. N. 12.

(*e*) As to the presumption of satisfaction in the case of legacies to creditors, see *Re Rattenberry*, [1906] 1 Ch. 667; notes to *Ex parte Pye*, White & Tudor, L. C.; *Re Fletcher*, 38 Ch. D. 373; *Re Huish*, 43 Ch. D. 260; *Re Horlock*, [1895] 1 Ch. 516. The presumption does not apply in the case of a *donatio mortis causâ* followed by a legacy of equal amount: see *Hudson* v. *Spencer*, [1910] 2 Ch. 285; referred to in *In re Hudson*, [1911] 1 Ch. 206, and *In re O'Grady* v. *Wilmot*, [1916] 2 A. C. 231.

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Direction as to legacies to creditors.

12. I DECLARE that any legacy hereby bequeathed to any person to whom, or to whose husband or wife, I shall be indebted at my death, shall be paid to him or her in addition to and not by way of satisfaction of any moneys which may be owing to him or her, or to his or her wife or husband.

Legacy to son (liable to lapse).

13. I BEQUEATH to my son, [*name*], [in case he should survive me (*f*),] the sum of £——, with interest thereon at the rate of —— per cent. per annum from the day of my death.

Legacy to vest at twenty-one, without interest.

14. I BEQUEATH to my son, [*name*], the sum of £——, if and when he shall attain the age of twenty-one years, but without interest in the meantime (*g*).

Legacy to carry interest.

15. I BEQUEATH unto my brother, [*name*], the sum of £——, to be paid as soon as convenient after my death; such legacy, if not paid within one calendar month, to carry interest at the rate of 4 per cent. per annum, from the date of my death.

Legacy at twenty-one with interim maintenance; gift over in case of lapse on death under age.

16. I BEQUEATH to my son, [*name*], the sum of £——, if and when he shall attain the age of twenty-one years, with interest thereon at the rate of —— per cent. per annum from the day of my death [such interest to be paid during his minority to his guardians or guardian for his maintenance and education]: AND if my said son should die before me, or under the age of twenty-one years, I bequeath the same sum of £—— [and interest] to C. D., absolutely. [*Or*, I declare that the said legacy shall fall into and form part of my residuary personal estate.]

(*f*) This provision is necessary if the testator intends that the Wills Act, s. 33, shall not apply.

(*g*) A contingent legacy will not generally carry interest, except (1) where the testator stands *in loco parentis* to the legatee, (in which case, if it is not the testator's intention that the legacy should carry interest, the presumption should be expressly negatived, as in the text; or (2) where there is a direction that the legacy shall be vested, in trustees or otherwise segregated for the benefit of the legatee. See *Re Clements*, [1894] 1 Ch. 665; *In re Worlin*, [1895] 2 Ch. 316; and *Re Eyre*, [1917] 1 Ch. 351.

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Legacy to class of children (*h*).

17. I BEQUEATH the sum of £—— unto and among my children equally, who being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, with interest on such respective legacies at the rate of —— per cent. per annum from the day of my death: PROVIDED ALWAYS (*i*) that this legacy shall not vest as a transmissible interest in any such child unless he attains the age of twenty-one years or she attains that age or marries.

Legacy to infant to be paid to his parent or guardian.

18. I GIVE to my nephew, [*legatee*], of, &c., the sum of £——, and if at the time of my death he shall not have attained the age of twenty-one years, then I authorise my executors at any time during such minority to pay the same sum to my brother, [*name*], the father of the said [*legatee*], or if my said brother shall be then dead, to the guardian or guardians of the said [*legatee*], and I declare that the receipt of my said brother or of such guardian or guardians shall be a sufficient discharge to my executors.

Gift to godchildren.

19. I BEQUEATH to each of my godchildren the sum of £——, and if there shall be any doubt as to who are objects of this bequest, my executors may act upon such evidence as they think fit, and their determination shall be conclusive: AND any godchild who shall not claim his or her legacy within one year from my death shall not be entitled thereto.

(*h*) For powers of maintenance, &c. of a person having a vested contingent interest, see T. A. 1925, s. 31.

A gift to such members of a class of children as shall attain a specified age vests only in those who actually attain that age: see *Dewar* v. *Brooke*, 14 Ch. D. 529.

At law, a person attains a specified age the day before the anniversary of his birth: *Re Shurey*, [1918] 1 Ch. 263.

It will be observed that in this and the preceding form the application of the whole income for maintenance, &c. is obligatory; if this is not desired, the words in brackets will be omitted.

(*i*) This proviso is intended to rebut the presumption that the gift of interim interest vests this legacy (which would otherwise be contingent on the legatee attaining twenty-one) in the legatee on the testator's death: see *Hanson* v. *Graham*, 6 Ves. 239; *Re Parker*, 16 Ch. D. 44; *Re Bunn*, 16 Ch. D. 47; *Re Gosling*, [1903] 1 Ch. 448; referred to in *In re Williams*, [1907] 1 Ch. 182, and *In re Ussher*, [1922] 2 Ch. 323. A gift over or direction that the legacy should fall into the residue should also be inserted.

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Vested legacy payable at twenty-one.

20. I BEQUEATH to [*legatee*], of, &c., the sum of £——, with interest thereon at the rate of —— per cent. from the day of my death, such legacy to be an interest vested in the said [*legatee*] at my death and transmissible accordingly, but not to be paid to him until he shall attain the age of twenty-one years (*k*).

Bequest to or in trust for children of testator as a class, including those dying in his lifetime leaving issue.

21. I BEQUEATH the sum of £—— to [A. B., of, &c., and C. D., of, &c., in trust for] such child or children of mine as shall be living at my death [and being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry], and any child or children of mine who may have died in my lifetime (whether before or after the date of this my will) leaving issue living at my death (*l*), if more than one, in equal shares, and so that the share hereby given to [*or*, in trust for] any such deceased child as aforesaid shall vest in his or her representatives as part of his or her personal estate in the same manner as if he or she had survived me and died immediately after me [having attained a vested interest].

Legacy with provision against lapse.

22. I BEQUEATH the sum of £—— to [*name*], of, &c., or if he should die in my lifetime, leaving issue surviving me, then, to his executors or administrators (*m*), to be disposed of by them as part of his general personal estate.

(*k*) As to interest on legacies payable *in futuro*, see *Crickett* v. *Dolby*, 3 Ves. 10; *Leake* v. *Robinson*, 2 Mer. 384; *Wood* v. *Penoyre*, 13 Ves. 326; *Donovan* v. *Needham*, 9 Beav. 164; *Earle* v. *Bellingham*, 24 Beav. 448; *Lord* v. *Lord*, L. R. 2 Ch. 782.

(*l*) The Wills Act, s. 33, does not apply to a gift to the children of the testator as a class. This clause adapts the provisions of the section to the shares of deceased children under a class gift. As to death duties, see next note.

(*m*) This is practically an adaptation of the provisions of the 33rd section of the Wills Act, which applies only to children and other issue of the testator: see *Re Coleman and Jarrom*, 4 Ch. D. 165. It is not sufficient merely to provide against lapse; there should be a direct gift to the personal representatives, as in the text: see the conflicting decisions in *Re Gresley's Settlement*, [1911] 1 Ch. 358; *Re Clunies-Ross*, [1912] W. N. 33; *Re Greenwood*, [1912] 1 Ch. 392. As to death duties on such a legacy, see *Lord Advocate* v. *Bogie*, [1894] A. C. 83; and as to the duty on legacies saved from lapse by sect. 33 of the Wills Act, see *Re Scott*, [1901] 1 K. B. 228. A provision against lapse in the case of

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Legacy to A. B. Substitution of children in case of lapse.

23. I BEQUEATH the sum of £—— to [*legatee*], of, &c., or, if he should die before me, then, to his children or child (if any) living at my death, who being male attain the age of twenty-one years, or being female attain that age or marry, if more than one, in equal shares.

The same, to several.

24. I BEQUEATH the legacies following, that is to say, to [*legatee No.* 1], of, &c., the sum of £——, to [*legatee No.* 2], of, &c., the sum of £——, &c.; but if any of the said legatees should die before me, then I give his or her legacy to his or her children, or child, &c. [*continue as in Form* 23].

Legacy to married woman with restraint on anticipation during coverture (*n*).

25. I BEQUEATH to [*legatee*], the wife of [*name*], of, &c., the sum of £——: PROVIDED ALWAYS, that if the said [*legatee*] shall at the time of my death be under her present or any other coverture my trustees shall retain the said sum during such coverture, and invest the same in their names, with the consent of the said [*legatee*], in or upon any of the investments hereinafter authorised, with power to vary such investments, with the consent of the said [*legatee*]; AND shall pay the income arising from such investments to the said [*legatee*] from time to time during such coverture, and the said [*legatee*] shall not have power during such coverture to assign, charge, or otherwise dispose of the said sum of £—— or the future income thereof by way of anticipation.

Legacies to several, with restraint on

26. I BEQUEATH the following legacies, that is to say, &c. [*legacies to several*]: PROVIDED ALWAYS, that if any such legatee,

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legacies "given by this my will" was held to extend (1) to shares of residue, (2) to legacies given by codicil: *Re Smith*, [1916] 1 Ch. 523; affirmed [1916] 2 Ch. 368.

(*n*) As to the effect of a restraint on anticipation in the case of an absolute gift, see *Re Bown*, 27 Ch. D. 411; *Re Currey*, 32 Ch. D. 361; *Re Grey's Settlements*, 34 Ch. D. 712; *Re Hutchings* (1887), W. N. p. 217; *Re Tippett and Newbould*, 37 Ch. D. 444; *Re Bankes*, [1902] 2 Ch. 333. The distinction between income-bearing and other funds laid down in *Re Clarke's Trusts*, 21 Ch. D. 748, must be regarded as not well founded: see *Re Bown, supra*. In imposing a restraint on anticipation, the rule against perpetuities must be considered. As to the effect of this rule, see *Re Ferneley's Trusts*, [1902] 1 Ch. 543, followed in *Re Game*, [1907] 1 Ch. 276. As to the Married Women's Property Act, 1882, see sect. 19 of that Act; and see also *Re Lumley*, [1896] 2 Ch. 690.

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being female, shall at the time of my death be under coverture, then and in every such case my trustees shall retain her legacy during her coverture, and invest the same, with the consent of such legatee, in the name of my trustees in or upon any of the investments hereby authorised, and may vary such investments with the like consent; AND shall pay the income arising from such investments to such legatee during coverture, without power of anticipation.

anticipation by female legatees during coverture.

27. I BEQUEATH to the said [*trustees*] the sum of £—— upon trust, to invest the same in their names in or upon any of the stocks, funds [shares], or securities hereinafter authorised, with power to vary such investments, and I direct my trustees to stand possessed of such trust fund and the investments and income thereof, upon trust for such person or persons and for such purposes as [*legatee*], of, &c., shall while not under coverture by deed or will, or while under any coverture by will appoint: AND in default of any such appointment or so far as any such appointment shall not extend upon trust to pay the income of the said trust fund to the said [*legatee*], without power of anticipation, during her life, and after her death to stand possessed of the capital of the said trust fund in trust, if the said [*legatee*] should die discovert, for the said [*legatee*], but if she shall die under coverture, then in trust for the persons who would be her statutory next of kin if any husband of hers living at her death had died immediately before her.

Legacy upon special trusts for the benefit of a married woman (*o*).

28. I BEQUEATH to the said [*trustees*] the sum of £—— upon trust, that my trustees shall invest the same in their names in or upon any of the investments hereinafter authorised, with power to vary such investments, and shall stand possessed of the said trust fund and the investments and income thereof upon trust, during the life of [*lunatic*], of, &c., to pay or apply the whole or so much as shall in their judgment be sufficient of the income [and capital] of such trust fund to such person or persons, or for such purposes and in such manner and upon such trusts, for the

Legacy in trust for the benefit of a lunatic.

(*o*) These trusts are intended to give the legatee full powers of disposition while discovert, but to restrict such powers as far as possible during coverture.

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maintenance, clothing, comfort, or otherwise for the benefit of the said [*lunatic*], and either subject to the control or superintendence of my trustees, or any of them, or otherwise, as they shall think fit; AND from and after the death of the said [*lunatic*] I direct and declare that the said legacy of £——, and the investments thereof [or so much thereof as shall not have been paid or applied for the purposes aforesaid], shall fall into and form part of my residuary personal estate.

Legacy in trust for improvident son (*p*).

29. I BEQUEATH to my trustees the sum of £——, in trust to invest the same in their names in or upon any of the investments hereby authorised, with power for my trustees from time to time to vary such investments; AND to stand possessed thereof on protective trusts for the benefit of my said son, [*name*], during his life [*or*,

Income for son until alienated, then for son's wife and children, as trustees shall think fit;

in trust to pay the income thereof unto my son, [*name*], until he shall commit or suffer some act, default, or process, which but for this limitation would have the effect of giving the benefit of such income either wholly or partially to any other person or persons; and thenceforth during the life of my said son, to pay or apply the said income to or for the benefit of the wife and child or children for the time being of my said son [*name*], or such one or more of them, and in such shares, if more than one, and in such manner as my trustees shall think fit; AND while there shall be no such wife or child, then to invest and accumulate the income in augmentation of the capital of the said legacy or trust fund, but with power to resort to such accumulations before or after my said son's death, as if the same were income; PROVIDED ALWAYS, that such trust for investment and accumulation shall not extend or be exerciseable beyond twenty-one years from my decease; AND if and when such trust for accumulation shall cease to be exerciseable, to apply the future income in the manner in which it would be applicable if my said son, [*name*], were dead; AND after the death of my said son, to pay the income from the said legacy or trust fund to his widow (if any); AND after her death to transfer or divide the capital of the said legacy or trust fund to or among such child or children of my said son as being male attain the age of twenty-one years, or being female attain that age or marry,

if no wife or child, to accumulate.

After son's death, for widow for life, then for children at twenty-one or marriage.

(*p*) In most cases the bequests on protection trusts will suffice: see T. A. 1925, s. 33.

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in equal shares if more than one; AND if no child of my said son should take a vested interest in the said legacy or trust fund, then, subject to the trust aforesaid, the same shall be held in trust for [*ulterior trusts*] [*or*, I direct that the same shall fall into and form part of my residuary personal estate].

Legacies to younger sons.

30. I BEQUEATH to each of my sons, other than and except such one of my said sons (if any), as, at the time of my death, shall become entitled to an estate for life in possession in the real estates respectively hereinbefore [*or*, hereinafter] devised [and appointed] the sum of £——, the same to be a vested interest in each such son immediately on my death, but not to be payable until the expiration of eighteen calendar months after my death; nevertheless, I declare, that each of the said legacies shall carry interest at the rate of —— per cent. per annum from the time of my death, to be payable quarterly, the first quarterly payment to be paid at the expiration of three calendar months after my death.

Interest.

Legacy to natural son of A. B.

31. I BEQUEATH the sum of £—— to [*name*], of, &c., the natural [*or*, reputed] son of [A. B.], late of, &c., deceased.

Legacy to children (including a natural daughter) to be invested.

32. I BEQUEATH to each and every of my children who, being a son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age or marry, [including my daughter [*illegitimate daughter*], who resides with me, and is now aged —— years, or thereabouts (*q*) (which my children, including the said [*illegitimate daughter*], are hereinafter collec-

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As to describing illegitimate children.

(*q*) Any description sufficient to identify the person is sufficient, without disclosing the fact of illegitimacy. But where the fact is not generally known, and it is desired to prevent any suspicion of it from arising, it is better to extend the same particularity of description to all the children, thus:—

Children now born, and future children.

"I GIVE to each of my five children now born, namely [*names of legitimate children and of illegitimate child*], and to every other child of mine hereafter to be born."

In subsequently referring to the children as a class, it is well always to particularise the children, adding the words "and to every other child," &c., or to expressly include the illegitimate children by reference as in the text, for an illegitimate child will not necessarily, apart from

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tively referred to as "my said children")], the sum of £——, the same several legacies to be paid as soon as may be after my death, and to bear interest from the day of my death at the rate of 4 per centum per annum. AND I direct, that the legacies of such of my said children as at the time of my death shall have attained the age of twenty-one years, or, being a daughter or daughters, shall be married under that age, shall be paid to them respectively within twelve calendar months after my death; AND that the legacies of such of my said children as shall, at the time of my death, be under the age of twenty-one years and, being a daughter or daughters, unmarried, shall be paid to and invested by and in the names of my trustees in any of the investments hereby authorised, with power for my trustees to vary such investments (*r*); AND the capital of such legacy or respective legacies, or so much thereof as shall not have been applied for the maintenance, education, or benefit or for the advancement of my said children or any of them, together with any unapplied accumulations of the income thereof, shall be paid or transferred to such child or children respectively, when and as he, she, or they respectively shall, being a son or sons, attain the age of twenty-one years, or, being a daughter or daughters, attain that age or marry under that age. AND in case any of my said children shall die under the age of twenty-one years, and, being a daughter or daughters, without having been married, then I direct, that the legacy or legacies hereinbefore bequeathed to such child or children respectively, together with any accumulations of the income thereof, shall (subject, nevertheless, to any advancement or advancements which shall or may have been made thereout (*s*)), fall into and

Directions as to payment of legacies to children, and investment during minorities.

Legacies of children dying under age and unmarried to sink into residue.

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indications of intention (as to which see *Re Helliwell,* [1916] W. N. 248), be included in subsequent provisions referring to children as a class: see *Bagley* v. *Mollard,* 1 Russ. & M. 581; *Megson* v. *Hindle,* 15 Ch. D. 199; *Drummond* v. *Leigh,* 30 Ch. D. 110; *Re Hall,* 35 Ch. D. 551. See, further, as to gifts to illegitimate children, *Re Smilter,* [1903] 1 Ch. 198; *Re Frogley,* [1905] P. 137; *Re Loveland,* [1906] 1 Ch. 542; *Re Corsellis,* [1906] 2 Ch. 316; *Re Eve,* [1909] 1 Ch. 796; *Re Pearce,* [1914] 1 Ch. 254; *Re Embury,* [1914] W. N. 220; 58 Sol. J. 612; Theobald on Wills, 7th ed. pp. 284 *et seq.*

(*r*) For investment clauses, see *ante,* pp. 348—351.

(*s*) Maintenance, accumulation and advancement clauses will be generally unnecessary: see T. A. 1925, ss. 31 and 32.

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form part of my residuary personal estate. PROVIDED ALWAYS, that, in case any of my said children should die before me, or (being a son) should survive me and die under the age of twenty-one years, and any child or children of any such child of mine should be living at my death, then, and in every such case, I bequeath the legacy hereinbefore intended for such child of mine so dying, with interest thereon as aforesaid, and in case of a son of mine surviving me and dying under age, any accumulated income accrued during such son's life, unto such his or her child or children, and if more than one, in equal shares (*t*). AND I declare that the provisions hereinbefore contained as to the time of payment of the legacies hereinbefore given to my said children, and as to the investment thereof in the meantime, and the application of the income thereof, and as to advancements out of the same legacies, and as to the sinking into the residue of the legacies intended for any legatees who shall die under the age of twenty-one years, or, being a daughter or daughters, unmarried, shall apply and extend to such grandchild or grandchildren of mine as aforesaid, and the legacies hereby given to him, her, or them.

Clause substituting children of any child dying before testator.

33*a*. I BEQUEATH the sum of £—— unto my [six other] children, [*names*], equally to be divided among them (*u*), and to be paid to them respectively at the end of twelve calendar months next after my death, but without interest in the meantime; but the respective shares of my said [six] children to be interests vested in them respectively immediately upon my death.

Legacy among children, *nominatim* equally.

33*b*. PROVIDED ALWAYS, that in case any of my said [six] children [lastly mentioned] should die in my lifetime, or (being a son or sons) under the age of twenty-one years, leaving a child or

Substitution of issue of children dying before testator.

(*t*) The 33rd section of the Wills Act, 1837, would furnish, in many cases, a sufficient provision against lapse by the death of a child of the testator leaving issue. But where the legacy is limited not to vest, or not to be raised except on certain conditions or in certain events, or when it is intended only to admit the issue of the deceased legatee, and to exclude his creditors and any parties who might claim under his will, or collaterally as next of kin of a child of the legatee dying in infancy, the legacy should be expressly given to the issue by substitution, which will exclude the operation of the 33rd section.

(*u*) As to the importance of using words of division or distribution in order to create a tenancy in common, see *Re Clarkson*, [1915] 2 Ch. 216.

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children (*x*) who shall be living at my death, and who shall live to attain the age of twenty-one years or (being a daughter or daughters) marry under that age, then the child or children attaining the said age or (being a daughter or daughters) marrying, of each such child so dying in my lifetime, or (being a son) under the age of twenty-one years, shall represent and stand in the place of his, her, or their deceased parent, and shall be entitled to the same share or shares, as well original as accruing, in the said legacy or sum of £——, which his, her, or their deceased parent would have been entitled to, if living at the time of my death and attaining the age of twenty-one years or (being a daughter) marrying, such share and shares to be divided between or among such children, if more than one, in equal proportions, and if there should be only one child, then to go to such only child.

Clause of accruer as to the shares of children dying in testator's lifetime or under age.

PROVIDED ALSO, and I further declare, that in case any of my said [six] children should die in my lifetime or (being a son or sons) under the age of twenty-one years, and no child of any such child should be living at my death and attain the age of twenty-one years or (being a daughter) marry, or in case any of my said [six] children (being a daughter or daughters) should die under the age of twenty-one years and unmarried, then, and in every such case, the share or respective shares [as well original as accruing (*y*),] of my child or children respectively so dying, of and in

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Respective extent of the words "children" and "issue."

(*x*) This clause, it will be observed, lets in, by way of substitution for the deceased legatees, their children merely, and not issue generally; so that it would not embrace the share of a child dying in the testator's lifetime leaving a grandchild but no child. In using the words "issue" and "children," attention should always be paid to their respective and various import. If, by the word "issue," the testator meant to designate issue of every degree, the intention should be declared in so many words, or, at all events, every expression which might give rise to an argument for restricting the word "issue" to children should be carefully avoided. On the other hand, if the testator's bounty is intended for children exclusively, the objects of the gifts should be invariably described and referred to by the word "children," in preference to "issue," as more completely preventing misconstruction. It seems that where the share to which issue are to succeed is described as their *parents'* share, the testator is considered to have explained himself to employ the word "issue" in the sense of *children*. See Theobald on Wills, 7th ed. p. 318.

(*y*) These notes will not be required unless the variation in the next note is adopted.

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the said legacy or sum of £——, shall be held (*z*) upon trust for such of my other children or their issue as shall eventually become entitled, under the limitations hereinbefore contained, to participate in and to receive actual payment of the other shares or share of the said legacy or sum of £——, and if more than one, in the like shares and proportions.

Testator's wife to take the interest on children's legacies until payable, to maintain the children.

34*a*. I DIRECT, that my said wife shall be entitled to interest after the rate of 4 per cent. per annum, in respect of the said sum of £—— hereinbefore bequeathed as aforesaid, [or such part of the said sum of £—— as I shall not have advanced to my said children as hereinafter mentioned,] during the period between my death and the expiration of the said twelve calendar months when the said several legacies will become payable, to the intent that my said wife shall, by and out of such interest, keep up a household and establishment, and provide for the maintenance and education of my said children for whose benefit the same bequests are hereinbefore bequeathed, in such manner as she shall think proper during the said twelve calendar months, without

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(*z*) In the precedent from which this form was taken, the legacy was given to six of seven children, there being a separate provision for the seventh (a married daughter), and the gift over in this place was thus expressed:—

Alternative form of clause as to accruer.

"Shall go and belong to and be divided equally among all my children who shall be living at the time of my death, [including my said daughter, [*married daughter*], if she should be then living,] and the child or children of any child or children who shall be then dead, such grandchild or grandchildren to take the share or respective shares of his, her, or their deceased parent or parents only; the shares of the said children and grandchildren respectively to be vested and payable or transferable at the like ages or times, and in the like manner in all respects, as his, her, or their original share or shares is or are hereby directed to be vested and to be paid or transferred: AND the share of my said daughter, [*married daughter*], to be subject to and held upon the same trusts, and for the same intents and purposes, as are hereinbefore expressed concerning the legacy or sum of £—— hereby bequeathed in trust as aforesaid."

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being liable to be called to an account for or by reason of any irregularity in the distribution or division of the said interest.

Power to trustees to settle the legacies of daughters marrying under twenty-one years of age.

34*b*. PROVIDED ALWAYS, and I hereby direct, that in case any of my daughters should, after my death, marry, while she or they respectively shall be under the age of twenty-one years, then, and in every such case, my trustees may, if they think proper, but not otherwise, settle the whole or any part of the legacy or legacies, as well original as accruing, hereinbefore bequeathed to such daughter or daughters respectively, [upon trusts for the benefit of such daughter or daughters respectively, and her or their child or respective children or more remote issue, similar to and corresponding with the trusts hereinbefore declared concerning the legacy of £——, hereby bequeathed in trust for my said daughter, [*married daughter*], and her children and more remote issue, as aforesaid, or] upon such [other] trusts, and subject to such [other] powers and provisions for the benefit of the daughter or daughters respectively so marrying, and her or their husband or husbands, child or children, or more remote issue and next of kin, or any of them, and reserving such powers and authorities to the trustees for the time being of such settlement, in relation to the said legacy or legacies respectively, as my said trustees or trustee shall think proper. [*Or specify the trusts upon which the settlement is to be made.*]

Costs of settlement.

AND I further declare, that the expense of every such settlement shall be paid out of the funds comprised therein (*a*).

(*a*) It is often convenient to give trustees a power of settling the legacy of a female marrying during minority, not only as a protection to the legatee against the consequences of an imprudent marriage, but because it may happen that otherwise no effectual settlement can be made, except by means of an application to the Court under the Infants' Settlement Act, 1855 (18 & 19 Vict. c. 43). Such is necessarily the case where the intended husband, as well as the wife, is a minor, since neither party can be bound by any act done whilst in this state of disability. An infant's marriage settlement is, however, voidable only, not void: *Davies* v. *Davies*, L. R. 9 Eq. 468; *Smith* v. *Lucas*, 18 Ch. D. 531, at p. 543; *Burnaby* v. *Equitable Reversionary Interest Soc.*, 28 Ch. D. 416; *Haynes* v. *Foster*, [1901] 1 Ch. 361. Notwithstanding sect. 19 of the M. W. P. A. 1882, in order to bind the husband the settlement must be confirmed by the wife when she comes of age: see sect. 2 of the M. W. P. A. 1907.

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35*a*. I BEQUEATH the sum of £—— to the said [*trustees*] in trust for all and every such children or child of my sister, [*name*], living at my death or born afterwards, and such children or child of any children or child of my said sister who shall be then dead, as being male shall attain the age of twenty-one years, or being female shall attain that age or marry, and if more than one in equal shares as between brothers and sisters: But so that the children collectively or child of any deceased child shall take, if more than one, in equal shares, such share only as his, her, or their parent would have taken, if living.

Legacy in trust for children of sister.

35*b*. I DIRECT my trustees to invest the said sum of £—— in manner hereinafter provided, and to pay to each adult son or grandson, and to each adult or married daughter or granddaughter of my said sister, the income of his or her presumptive share for the time being (*b*). AND I authorise my trustees, if they should think fit, to distribute the said sum of £—— in the lifetime of my said sister, at any time after she shall have attained the age of fifty years.

Presumptive shares.

Authority to divide the funds when mother shall have attained a certain age.

36. I GIVE to my nephew, [*name*], if he attain the age of twenty-one years, the sum of £——. I give to my niece, [*name*], £——, if she attain that age or marry. AND, if either my said nephew should die before me or under age, or my said niece should die before me or under age and without having been married, I give the legacy intended for such nephew or niece so dying to the other of them, if he or she attain his or her majority, or (as to my said niece) if she marry; AND, if both should die before me or under age and (as to my said niece) unmarried, I give their respective legacies to my cousin, [*name*].

Legacies to nephew and niece to be paid at twenty-one or marriage, with cross limitations, and gift over.

37. I GIVE the sum of £—— to or among such of the six children of my late cousin, [*name*], as shall survive me (*c*), if more than one, in equal shares, as tenants in common (*d*).

Legacy to the six children of A. B.

(*b*) If a child were born in the interval between two days of payment, this would be a determination *pro tanto* of the interest of any adult child or children in the income here directed to be paid, and the Apportionment Act (33 & 34 Vict. c. 35) would therefore apply.

Apportionment of income.

(*c*) A gift to "the six children of A.," as tenants in common, not being

(*d*) See *ante*, p. 507, note (*u*).

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Legacy among living persons by name, and the children of deceased persons *per stirpes*.

38. I BEQUEATH the sum of £—— unto such of the following persons, [*names*] as shall attain the age of twenty-one years, or die under that age leaving a surviving husband or wife or issue, and the child or children who shall attain the age of twenty-one years, or die under that age leaving a surviving husband or wife or issue, of [*deceased persons*], respectively deceased, in equal shares; But so that the child or the children collectively of one parent shall take one share only, to be divided equally among them; AND in case any of the said intended legatees should die before me, leaving a husband or wife or issue living at my death, I give the share which each such legatee would have taken, if he or she had survived me, unto his or her executors or administrators, as part of his or her general personal estate.

Substitution of personal representatives of legatee dying before testator, and leaving a widow, husband, or child.

Legacies to nephews at twenty-one.

Substitution of children of deceased nephews.

Legacies to nieces at twenty-one or marriage.

Substitution of children of deceased niece.

Clause of accruer.

39. I GIVE £—— to each of my four nephews [*names*] (children of my late brother, [*name*]), who shall survive me, and attain the age of twenty-one years. I give the like sum to or equally among the child or children who shall attain the age of twenty-one years or die under that age leaving issue of each of my said nephews who shall die before me, or under the age of twenty-one years. I give £—— to each of my three nieces, [*names*], (children of my said late brother,) who shall survive me and attain the age of twenty-one years, or marry under that age. I give the like sum to, or equally among, the child or children who shall attain the age of twenty-one years, or die under that age leaving issue, of each of my said nieces who shall die before me. AND I give such of the said legacies intended for my said nephews and nieces respectively, or their issue, as shall not take effect under the bequest hereinbefore contained, unto and among such of my said nephews and nieces, and their issue, as shall take vested interests or a vested interest under the said

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a gift to a class, would be liable to lapse as to the share of any legatee dying before the testator: *Page* v. *Page*, 2 P. Wms. 489; *Peat* v. *Chapman*, 1 Ves. sen. 542; *Sykes* v. *Sykes*, L. R. 3 Ch. 301. But a gift under the same circumstances to "the child or children of A.," as tenants in common, would wholly vest in those who survived the testator (*Doe* d. *Stewart* v. *Sheffield*, 13 East, 526; *Shuttleworth* v. *Green*, 4 My. & Cr. 35); and this rule as to class gifts applies to a gift to A. and the children of B.: see *Kingsbury* v. *Walter*, [1901] A. C. 187; referred to in *In re Scorer*, [1925] W. N. 16.

bequest; and if more than one, to be divided between or among them, in proportion to the respective amounts of their respective original legacies under the said bequest hereinbefore contained. PECUNIARY BEQUESTS.

40. In exercise of the powers contained in my marriage settlement, I direct the annual sum of £—— to be paid to my wife, during her life, without power of anticipation, during any coverture. And I appoint to each of my sons, being an object of the power in that behalf contained in my marriage settlement, who shall attain the age of twenty-one years or marry, the sum of £——; And, by virtue of the same power, I appoint to each of my daughters who shall attain the age of twenty-one years or marry, the sum of £——, without power of anticipation. I declare that the sum of £——, which I have expended in the purchase of a partnership share in the firm of —— & Co. for my son, *[name]*, is to be considered as a satisfaction to that extent of the portion hereby appointed to him; And that the sum of £——, which I settled

Appointment of portions under power in settlement.

Advancements in testator's lifetime to be considered as in satisfaction (*e*).

(*e*) Legacies and portions will generally be presumed to be adeemed by subsequent gifts to the legatee in the testator's lifetime, if the testator is the father of the legatee or stands to him *in loco parentis* (see *Boyd* v. *Boyd,* L. R. 4 Eq. 305; *Leighton* v. *Leighton,* L. R. 18 Eq. 459; *Re Furness,* [1901] 2 Ch. 346; *Re Peel's Settlement,* [1911] 2 Ch. 165), or if a moral obligation other than parental or *quasi*-parental is recognised by the will: *Re Pollock,* 28 Ch. D. 552. But the presumption may be rebutted (*Taylor* v. *Taylor,* L. R. 20 Eq. 155; *Re Scott,* [1903] 1 Ch. 1), and does not generally arise in the case of a mother: *Bennet* v. *Bennet,* 10 Ch. D. 479. The rule applies to gifts of residue (*Thynne* v. *Earl of Glengall,* 2 H. L. C. 131; *Montefiore* v. *Guedalla,* 1 De G. F. & J. 93; *Meinertzagen* v. *Walters,* L. R. 7 Ch. 670), but not to advances for a particular purpose, or occasional gifts of small amount (see *Schofield* v. *Heap,* 27 Beav. 93; *Ravenscroft* v. *Jones,* 32 Beav. 669; *Watson* v. *Watson,* 33 Beav. 574; *Hatfield* v. *Minet,* 8 Ch. D. 136), or in favour of a stranger as against a child: *Re Heather,* [1906] 2 Ch. 230. See, further, on this subject, Theob. Wills, 7th ed. pp. 767 *et seq.*; Robbins & Maw, 4th ed. 314 *et seq.* For other provisions as to ademption by advancement, see *post,* p. 516, Forms 47, 48. As to how advances are to be brought into account, see *Re Cooke,* [1916] 1 Ch. 480, and *Re Tod, ibid.* 567, following *Re Craven,* [1914] 1 Ch. 348, and *Re Poyser,* [1908] 1 Ch. 828. And as to interest on advances, see *Re Davy,* [1908] 1 Ch. 61; *Re Willoughby,* [1911] 2 Ch. 581; *Re Lambert,* [1897] 2 Ch. 169. For the purpose of hotchpot, the value of the funds advanced or settled must be ascertained, as at the date of advancement or settlement, *not* as at

Ademption of legacies.

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upon the marriage of my daughter, [*name*], is to be considered as a satisfaction to that extent of the portion hereby appointed to her. I declare that any advancements which I have made or may make for the benefit of any of my children, to a greater amount at any one time than £——, shall be taken in satisfaction, to that extent, of the portions hereby appointed to him, her, or them; AND I declare that all such advancements as aforesaid, already made or to be made, shall be deemed to have been made in exoneration of the estates comprised in my marriage settlement, and which I have power to charge with portions.

Advancements to be in exoneration of estates charged.

Legacy in satisfaction of covenant in a marriage settlement.

41. IN SATISFACTION of a covenant entered into by me, and contained in an indenture of settlement dated, &c., and made between [*parties*] (being the settlement executed on the marriage of my daughter, [*name*]), I hereby bequeath to the persons or person who shall be, at the time of my death, the trustees or trustee of the same settlement, the sum of £——, with interest thereon from the day of my death until payment thereof at the rate of —— per cent. per annum.

Legacy upon trusts of a marriage settlement.

42. I BEQUEATH the sum of £—— to the persons or person who shall be at the time of my death the trustees or trustee of an indenture of settlement, dated, &c., and made between [*parties*], being the settlement executed on the marriage of my daughter, [*name*], to be held by them and him upon the trusts, and with, under, and subject to the powers, provisions, and declarations in and by the same settlement declared and contained of and concerning the property thereby settled or agreed to be settled by or on the part of my said daughter, and therein collectively referred to as "the wife's fortune," or such of the same trusts, powers, provisions, and declarations as may then be subsisting or capable of taking effect with respect to the same, and so that all such trusts, powers, provisions, and declarations shall take effect with regard to the said sum of £—— hereby bequeathed in all respects (except as is hereinafter otherwise expressly provided), so far

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the time of the testator's death, and where the testator dies within three years of the settlement, the estate duty payable in respect of the funds must be deducted from the value for hotchpot: *Re Crocker*, [1916] 1 Ch. 25; *Re Beddington*, [1900] 1 Ch. 771.

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as circumstances will permit, as if the same sum had been originally comprised in the said indenture of settlement, and had formed part of the said wife's fortune therein referred to: PROVIDED ALWAYS, &c. [*insert any modification of the trusts, &c., which may be desired*].

In case of deficiency of assets, legacies to be paid in order of priority of gifts.

43. I DIRECT that, in case of a deficiency of assets for the full payment of all the pecuniary legacies hereinbefore bequeathed, the said legacies shall be paid in full respectively in the order of priority in which they are hereinbefore given, so far as the assets applicable for the payment thereof will extend: PROVIDED ALWAYS, that any legacies given to a class shall rank and be paid *pari passu* as between themselves.

Direction as to abatement of particular legacies.

44. I DIRECT that in case of a deficiency of assets for the full payment of all the pecuniary legacies hereinbefore bequeathed, the two legacies of £—— and £—— hereinbefore bequeathed to the said [*legatees*] respectively, shall abate rateably and in proportion before any other legacy.

Direction that legacies shall be free of duty (*f*).

45. I DIRECT that all the pecuniary legacies hereinbefore bequeathed shall be paid clear of death duties, which shall be paid out of my general personal estate.

Power to postpone the raising of legacies bequeathed in trust.

46. PROVIDED ALWAYS, and I hereby direct that the several legacies hereinbefore bequeathed in trust respectively, or any part thereof respectively, shall not be raised (unless my executors shall in their absolute discretion see fit sooner to raise the same, or any of them, or any part thereof respectively), until the capital of such respective legacies or some part thereof respectively shall become payable; AND I further direct that until the said several legacies hereinbefore bequeathed in trust shall be fully raised and

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(*f*) As to whether this refers only to duties imposed at the date of the testator's death, or extends to duties subsequently imposed, see *Re Snape*, [1915] 2 Ch. 179, distinguished in *Re Palmer*, [1916] 1 Ch. 395, and disapproved in *Re Hatch*, [1916] W. N. 240; *Re Stoddart*, [1916] 2 Ch. 444; *Re Tinkler*, [1917] 1 Ch. 242; *In re Sarson*, [1925] 1 Ch. 34; *Re D'Oyley*, [1917] 1 Ch. 556; *In re Parker*, [1917] W. N. 233; *Re Eve, ibid.* 562.

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paid or appropriated (*g*), interest thereon respectively, or on such part thereof respectively as shall for the time being be unpaid or unappropriated, shall be paid or applied by my executors out of my residuary estate for the benefit of the persons for the time being entitled to the said respective legacies.

Advancements not to be in satisfaction of legacies.

47. I DECLARE that any advancements or sums of money, to the amount at any one time of £——, or more respectively, which I may make or apply for the benefit of any of my children, shall be in addition to, and not in satisfaction of any legacy or legacies or other provision or benefit made or given to him, her, or them, unless a contrary intention is therein expressed.

Advances to son to be in satisfaction of legacy (*h*).

48. I DECLARE that the sum of £—— advanced by me to my son, [*name*], and any further advances which I may hereafter make to him [to the amount at any one time of £—— or more], and the interest payable thereon [respectively], or so much of the said sum [and further advances, if any, respectively], and interest, as shall not have been repaid at the time of my death, shall be taken in or towards satisfaction of the legacy and provisions given to and made for my said son by this my will or any codicil thereto, unless a contrary intention is therein expressed.

Charitable legacy to a hospital (*i*).

49. I BEQUEATH to the Infirmary [*or*, Hospital] at ——, for the general purposes of the institution, the sum of £—— [free from death duties]; AND I declare that the receipt of the treasurer, or other person properly authorised to give receipts, shall be a sufficient discharge for the same.

(*g*) As to appropriation, see A. E. A. 1925, s. 41.

(*h*) See, as to this, *Re Kelsey*, [1905] 2 Ch. 465; and as to advances made subsequent to the will, see *Smith* v. *Conder*, 9 Ch. D. 170; *Re Scott*, [1903] 1 Ch. 1; *Re Watney*, 56 Sol. J. 109. See also *ante*, p. 513, note (*e*).

As to gifts of realty in mortmain.

(*i*) As to gifts of land, or legacies charged on land, or other personal estate "savouring of realty," see, now, the Mortmain, &c. Act, 1891, ss. 3, 4 and 5, by which the restriction on such gifts is removed. Under this statute (s. 5) the land must be sold within one year from the testator's death, unless the time is extended by the Court or Charity Commissioners; and if not sold within the year, will vest (s. 6) in the official trustee of charity lands.

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Several charitable legacies.

50. I BEQUEATH [free from death duties] unto the Society for the Promotion of Christian Knowledge the sum of £——, and to the Infirmary at ——, in the county of ——, my native town, the sum of £——: AND I direct that such legacies respectively shall be paid to the treasurers for the time being of the said several institutions, to be applied to the general purposes thereof respectively. AND I declare that the receipts of the respective treasurers or other persons properly authorised to give receipts on behalf of the said respective societies and institutions shall be a sufficient discharge for the same respective legacies.

Legacy to the Governor of Queen Anne's Bounty (*k*).

51. I BEQUEATH the sum of £—— [free from death duties] to the Governors of the Bounty of Queen Anne to be applied for the augmentation of the Vicarage of ——, in the county of ——.

Gift to a sisterhood.

52. I BEQUEATH to the Mother Superior for the time being of the Sisters of Charity of the House of Charity at —— [*or*, of the Community of St. —— at ——, *or as the case may be*], to be applied in furtherance of the charitable objects of the said sisterhood ["House of Charity" *or* "Community"]; AND I declare that the receipt of any person being or professing to be such Mother Superior for such legacy shall be a sufficient discharge for the same.

Gift to rector for the benefit of the poor.

53. I BEQUEATH to the rector for the time being of the parish of ——, in the county of ——, the sum of £—— [free of death duties], for distribution at his discretion among the poor of the said parish.

Legacy to such charities as trustees shall select.

54. I BEQUEATH the sum of £—— [free of death duties] to or for such charitable institution or institutions in the United Kingdom, and for such purposes of a charitable or benevolent (*l*)

(*k*) As to grants to Queen Anne's Bounty, see the Acts 2 & 3 Anne, c. 20; 43 Geo. 3, c. 107; 1 & 2 Vict. c. 20.

As to the admission of extrinsic evidence to show which of several claimants to a charitable legacy was intended by the testator, see *Re Raven*, [1915] 1 Ch. 673.

(*l*) See *Re Best*, [1904] 2 Ch. 354. As to what are "charitable purposes," see *Re Verrall*, [1916] 1 Ch. 100; *Re Mellody*, [1918] 1 Ch. 228. As to gifts by will to charities, see Key & Elph. 10th ed. pp. 857 *et seq.*

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nature as my trustees [*or*, my acting executors or executor] (*m*) shall select, such power of selection to be exercised within one year from my death.

Gift to a school.

55. I BEQUEATH to the —— for the time being of —— school the sum of £—— [free of death duties] upon trust to invest the same in such stocks, funds, and securities as they shall in their absolute discretion think fit, with power to vary investments, and from time to time to apply the interest and moneys arising from such investments towards the promotion of such athletic, aquatic, and other sports as shall from time to time be included in the curriculum of the said school.

GIFTS OF ANNUITIES (*n*).

Bequest of annuity.

1. I BEQUEATH to [*annuitant*] an annuity of £——, during his life, clear of legacy duty [free of duty and of income tax (*o*)],

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(*m*) See *Crawford* v. *Forshaw*, [1891] 2 Ch. 261; *Re Smith*, [1904] 1 Ch. 139.

(*n*) An annuity is a general legacy, and as such is liable to abatement, in case of deficiency, with other legacies: *Re Ross*, [1900] 1 Ch. 162; *Re Metcalf*, [1903] 2 Ch. 424. For limitations of jointures, &c. charged on land, see *post*, under the heading "Strict Settlement." Apportionment is provided for by the Apportionment Act, 1870. Annuities are included in the provisions as to protective trusts contained in sect. 33 of the T. A. 1925.

Legacy duty.

(*o*) Annuities should generally be given free from death duties because, the legatees having no capital out of which to pay the same, the impost is necessarily thrown on the income. Annuities are subject to legacy duty if payable out of personal estate, and to succession duty if payable out of real estate: see Customs, &c. Act, 1888, s. 21 (2). As to estate and settlement estate duty, see *Re Duke of St. Albans*, [1900] 2 Ch. 873. As to income tax, see *Re Bannerman*, 21 Ch. D. 105; *Re Sharp*, [1906] 1 Ch. 793; *L. C. C.* v. *Att.-Gen.*, [1901] A. C. 26; *Re Saillard*, [1917] 2 Ch. 140, 401; *Re Loveless*, [1918] 1 Ch. 223; 2 Ch. 1; *In re Shrewsbury Estate Acts*, [1924] 1 Ch. 324; *Re Cain's Settlement*, [1919] 2 Ch. 364; and see Property Tax Act, 1842, ss. 60 and 102; Income Tax Act, 1853, s. 40; *Re Crosse*, [1920] 1 Ch. 240 (super-tax); *In re Bates*, [1925] W. N. 9; [1925] 1 Ch. 160; Customs, &c. Act, 1888, s. 24 (3).

ANNUITIES.

such annuity to commence from my death (*p*) and to be paid by equal quarterly payments, the first of such payments to be made at the expiration of three calendar months from the time of my death. AND I direct my executors, as soon as convenient after my death, to purchase in their names such an annuity, either from Government or from any Public Company, or, secured upon freehold, copyhold, or leasehold, or other real or chattel real security, from any private person or persons, as my executors shall deem expedient; AND I direct that, until such purchase shall be made, the said annuity shall be paid out of my general personal estate at the times and in manner aforesaid.

Direction to purchase annuity (*q*).

2. I DIRECT my trustees, out of the income of my residuary estate [the said trust fund], to pay an annuity of £——, clear of legacy duty and all other incidental expenses and deductions, to

Direction to pay annuity.

(*p*) An annuity given by will commences from the testator's death: *Re Robbins*, [1907] 2 Ch. at p. 13.

Annuity commences from testator's death.

As to annuities given free of death duties, see *Re Pimna*, [1904] 2 Ch. 345; *Re Cayley*, *ibid.* 781; *Re Briggs*, [1914] 2 Ch. 413; *Re Hatch*, [1916] W. N. 240; *Re Kennedy*, [1916] 2 Ch. 379; reversed [1917] 1 Ch. 9; *In re Tanqueray*, [1924] W. N. 142.

(*q*) It is convenient to provide for annuities in the manner here suggested, in order to avoid keeping open the accounts and the final distribution of the general estate. It is, in general, proper to give the trustees an option to purchase elsewhere than from the Government, because it is sometimes extremely difficult, if not impossible, to comply with the rules as to proof of age, &c. which are strictly enforced in granting Government annuities. Annuities for a small amount can be purchased through the medium of a savings bank.

Direction to purchase annuity.

A person for whom an annuity is directed to be purchased, as in the text, may elect to take the price or value instead of the annuity. The same right vests in his representative, if the legatee happens to have died before the purchase, and who, of course, declares his election to receive the price (*Re Robbins*, [1907] 2 Ch. 8; and *Re Brunning*, [1909] 1 Ch. 276); but where a testatrix directed her trustees to purchase Government annuities to be paid for out of the proceeds of sale of lands devised on trust for sale, an annuitant who died before the completion of the sale was held to have no claim on the value of the annuity: *Re Mabbett*, [1891] 1 Ch. 707. A clause providing that the annuitant shall in such a case not be entitled to elect to receive the price or value of an annuity is ineffectual (*Stokes* v. *Cheek*, 28 Beav. 620), unless there is a gift over (*Power* v. *Hayne*, L. R. 8 Eq. 262), or a proviso for cesser: *Halton* v. *May*, 3 Ch. D. 148; but see *Hunt-Foulston* v. *Furber*, *ibid.* 285.

Legatee's right to take value of annuity.

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[*annuitant*], during her life [without power of anticipation (*r*)], by quarterly payments, the first payment to be made at the expiration of three calendar months from my death.

Annuities to several.

3. I BEQUEATH the following annuities [free of duty], that is to say, to A. B., of, &c., during his life, an annuity of £——; to B. C., of, &c., during his life, an annuity of £——; and to E. F., of, &c., during her life, without power of anticipation, an annuity of £——; such respective annuities to commence from my death, and to be paid by equal quarterly payments, the first payment to be made at the expiration of three calendar months from my death.

Annuities to several.

4. I GIVE to A. B. an annuity of £—— during his life; to C. D. an annuity of £—— during her life; and to E. F. an annuity of £—— during her life; but the two last-mentioned annuities to be without power of anticipation during any coverture by the respective annuitants. I authorise my trustees to set apart or purchase, in their names, sufficient sums of $2\frac{1}{2}$ per Cent. Consolidated Stock to satisfy the said annuities, by equal quarterly payments, clear of legacy duty and all other deductions; AND in the meantime to pay such annuities out of my general personal estate; the first quarter's payment of each such annuity to be made in full on the first day for the payment of dividends on the said stock, which shall occur after my death (from the quarter day preceding which day of payment such annuity is to be deemed to commence) (*s*): AND the last payment of each such annuity to be made in full on such one of the said dividend days as shall first occur after the death of each such annuitant respectively and no apportionment shall take place (*t*).

Funds to be set apart to pay annuities.

Direction as to commencement and termination of annuities.

(*r*) A direction to purchase an annuity for a woman without power of anticipation is not effectual (if at the date of the testator's death she is unmarried) to prevent her being entitled to claim the value of the annuity in bulk: *Woodmeston* v. *Walker*, 2 R. & M. 197; *Power* v. *Hayne*, L. R. 8 Eq. 262.

(*s*) As to the necessity for the parenthesis, see *Irvin* v. *Ironmonger*, 2 R. & M. 531.

(*t*) This provision is intended to exclude the operation of the Apportionment Act, 1870 (33 & 34 Vict. c. 35), s. 7.

ANNUITIES.

5. I DIRECT my trustees to purchase or appropriate a sufficient fund of the $2\frac{1}{2}$ per Cent. Consolidated Stock to provide for the payment of each of the annuities hereby given, [*or*, of the said annuity]; after which purchase or appropriation, the residue of my estate shall be exonerated from all liability in respect of such annuities, [*or*, of the said annuity]; AND, subject thereto, the said fund shall form part of my residuary estate.

Direction to appropriate stock for payment of annuity.

6. [*Annuities to several, Form* 3, *p.* 520.] I DIRECT my trustees to provide for the several annuities hereinbefore bequeathed, by setting apart a sufficient portion of the said trust premises [*or*, of the produce of my residuary [real and] personal estate] for that purpose, or by purchasing, in their names, an annuity or annuities of the like amount or respective amounts from Government, or from any public company. AND I declare, that, if any part or parts of the same trust premises [*or*, of the produce of my said residuary [real and] personal estate] shall be so set apart as aforesaid, and the annual produce or income of such part or parts respectively shall, at the time or respective times of their being so set apart, be sufficient to produce the annuity or respective annuities for which the same shall be set apart, the setting apart of such part or parts respectively of the said trust premises [*or*, of the produce of my said residuary [real and] personal estate] shall be deemed and taken to be a complete satisfaction of the trust to provide for the annuity or annuities for which the same shall be so set apart, and shall be a complete exoneration of the other parts of my estate therefrom, although the part or parts so set apart shall afterwards prove insufficient to provide for the same annuity or respective annuities; but the capital of such part or parts respectively shall, if necessary, be

Direction to trustees to set apart a fund for annuities (*u*).

Proviso in case fund set apart proves insufficient.

In case of deficiency of funds set

(*u*) As to the effect of this direction where the funds are deficient, see *Re Cottrell*, [1910] 1 Ch. 402; *Re Richardson*, [1915] 1 Ch. 357; *Re Dempster*, [1915] 1 Ch. 795. Where annuities were charged upon the capital and income of residuary estate, and the income was for a time insufficient to pay them in full, but there subsequently became a surplus of income, it was held in *Re Croxon*, [1915] 2 Ch. 290, that the tenant for life could not be called upon to replace the deficiency raised out of capital. The appropriation of a fund to meet annuities is a "settlement" of the fund, and the fund is liable to settlement estate duty: *Re Campbell*, [1902] 1 K. B. 113; *Re Waller*, [1916] 1 Ch. 153.

ANNUITIES.

apart, annuities to be paid out of capital.

Annuities to be for inalienable use of female annuitants.

Proviso for cesser on alienation (applicable to male or female annuitants).

applicable to the payment of the annuity or respective annuities to provide for which the same shall have been set apart. [PROVIDED ALWAYS, and I hereby direct, that the said annuities respectively hereinbefore bequeathed shall be, as to such of the said annuitants as are females respectively, without power of anticipation during any coverture.] [AND I direct, that no annuitant shall be entitled to receive the value of his or her annuity in lieu thereof, and if any of them [the said *annuitants*], whether under disability or not (*x*), shall assign, dispose of, or charge the annuity hereinbefore bequeathed to him or her, or any part thereof, or in case he or she shall become bankrupt, then, and in every such case, the said annuity with respect to which the same shall happen shall immediately thenceforth cease, as if he or she were dead, to all intents and purposes whatsoever; AND thereupon the portion of the said trust premises [*or*, of the produce of my residuary [real and] personal estate] so set apart as aforesaid, or the unapplied part thereof, shall fall into and form part of my residuary personal estate.]

Annuity to wife reducible on remarriage.

7. I BEQUEATH to my wife —— an annuity of £—— [free of duty] during her widowhood, commencing from my death; AND in case she marries again, then a reduced annuity of £—— [free of duty] during the remainder of her life, without power of anticipation, such respective annuities to be payable by equal quarterly [half-yearly] payments.

Annuity to two persons and survivor of them.

8. I BEQUEATH to A. B., of, &c., and C. D., of, &c., and the survivor of them, an annuity of £—— [free of duty] during their joint lives, and the life of such survivor, such annuity to commence, &c. [*as in Form* 1, ante, *p.* 525].

Annuity for wife to be for maintenance of herself and daughters until marriage.

9. PROVIDED ALWAYS, and I hereby declare, that the annuity hereinbefore given to my said wife during her widowhood is so given upon trust for the maintenance and mutual benefit of herself and my daughters, or such of them as shall for the time being be living and unmarried, and until their respective marriages in the

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As to restraints on alienation.

(*x*) The established doctrine is, that a *feme covert* may be restrained from alienation without any gift over or clause of cesser; but a person not under coverture, whether man or woman, cannot be so restrained: see *Power* v. *Hayne*, L. R. 8 Eq. 262; *Halton* v. *May*, 3 Ch. D. 148.

lifetime of my said wife; but so, nevertheless, that my said wife shall not be liable to account so long as she shall maintain my said daughters to the satisfaction of my trustees. ANNUITIES.

10. I DIRECT, that (subject to any special directions contained to the contrary in my will or any codicil thereto), every annuity given by this my will, or any codicil hereto, shall commence and be computed from the time of my death, and shall be payable, clear of death duties, and other incidental expenses and deductions, quarterly, on such days as in the opinion of my trustees shall be most convenient with regard to the fund or provision for the payment thereof [*or*, on the usual quarter days]; the first of such payments to be made on such of the said days as shall first happen after my death, either out of the fund or funds to be appropriated for the same, or out of my general personal estate, and to be proportional to the time which shall then have elapsed from the day of my death. General directions as to annuities; to commence from testator's death; payable quarterly. Apportionment.

11. EVERY annuity given by my will (*z*), or any codicil thereto, to a female shall be without power of anticipation. Female legatees restrained from anticipation.

12. IF ANY act or event shall be done or happen (either before or after my death) whereby any annuity hereby given, or any part thereof, would, if belonging absolutely to the annuitant, become vested in or charged in favour of some other person or persons, then such annuity shall thereupon cease as if the annuitant were dead. Cesser on alienation (*a*).

13. IF MY trustees appropriate for paying any annuity or annuities a fund or funds which at the time of such appropriation If a fund is appropriated for annuities,

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(*y*) As to the right of trustees, where annuity is payable out of income of settled share, to retain surplus income to meet possible deficiency in future years, see *Re Platt*, [1916] 2 Ch. 563.

(*z*) As to the meaning of the words "given by this my will" in a gift of pecuniary legacies, see *Re Smith*, [1916] 1 Ch. 523, where it was held that a clause providing against lapse extended to legacies given by codicil.

(*a*) Under the proviso for cesser it is conceived that the annuity would not be apportionable; but if it were given over, it clearly would be apportionable for the benefit of the annuitant's assignee: see *Shipperdson* v. *Tower*, 8 Jur. 485; *Clive* v. *Clive*, L. R. 7 Ch. 433. Apportionment.

ANNUITIES.

general estate to be exonerated (*b*).

shall produce a sufficient income to answer the same, such annuity or annuities shall thenceforth be exclusively charged on such fund or funds in exoneration of the residue of my estate, and shall in case of any future deficiency of the income of such fund or funds be made up out of the capital thereof.

Trustees may vary times of payment.

14. I DIRECT that (subject to any special directions in my will or any codicil thereto to the contrary), every annuity given by my will or any codicil thereto shall be computed from my death, and be paid half-yearly, on such days as may be most convenient with regard to the respective funds out of which the same shall be payable; AND that every such annuity shall be made good for the full period from the day of my death to the day of the determination thereof (otherwise than by forfeiture), by apportionment if necessary; AND that my trustees may from time to time vary the days of payment of any annuity in case a change of investment should render it convenient so to do, and in such case a proportional part shall be paid in respect of the broken period occasioned by such change.

Charge of annuities on real estate.

15. I CHARGE the annuities given by this my will, together with the duty thereon, exclusively on my real estates (*c*) [*or*, "on the freehold [*or*, 'leasehold'] messuages, lands, and hereditaments hereinafter devised to ——"], and if the same be deficient, such annuities shall abate rateably.

Annuities to be free of duty.

16. I DIRECT that all the annuities given by my will or any codicil thereto shall be provided for and paid to the respective annuitants clear of all death duties (*c*) and other expenses.

Annuities to have priority over legacies.

17. AND I further direct and declare that none of the legacies to my children hereinafter bequeathed shall be paid until full and adequate provision shall have been made for the payment of the annuities of £—— and £—— hereinbefore bequeathed.

Power to appoint agents in

18. AND, for the purpose of facilitating the execution of the trusts of the said annuity, I authorise my trustees, while my said son,

(*b*) As to powers of appropriation by executors, see A. E. A. s. 41.

(*c*) By the stat. 51 Vict. c. 8, s. 21 (2), legacies by way of annuity charged on or payable out of the proceeds of sale of real estate are liable to succession duty, including the additional duties imposed by that Act.

ANNUITIES.

or any wife or child of my said son, shall be in Australia or elsewhere abroad, to employ any agent or agents in Australia or elsewhere abroad, and to delegate to such agent or agents all and every or any of the discretionary or other powers or authorities which my trustees would have, or might personally exercise, in relation to the said annuity, without being answerable for the acts or defaults of any such agent or agents.

Australia, and to delegate powers.

19. My TRUSTEES may, at their discretion, continue any annuities or charitable or other allowances, donations, or subscriptions which I shall have been paying in my lifetime, or any part thereof, during such time not exceeding —— years (*d*), as they may think fit.

Power to continue testator's allowances, subscriptions, &c.

20. I DECLARE that all annuities by this my will or by any codicil hereto shall be held by my trustees for the benefit of any annuitant upon protective trusts (*e*).

Annuities to be held upon protective trusts.

SETTLED LEGACIES (*f*).

1. I DIRECT my trustees, within a year from my death, to invest the said sum of 4,000*l.* in their names, in or upon any of the investments hereby authorised, but not in any other mode of investment; with power to appropriate for that purpose any security or securities of any of the kinds aforesaid which I may have at my death at the value thereof at the time of such appropriation; AND with power, from time to time, to vary such investment; AND to pay the income therefrom to my nephew, [*name*], during his life [*or*, and shall hold the income therefrom for the benefit of my nephew, [*name*], during his life upon protective trusts] and after his death to transfer the same in such manner for the benefit of any of his child or children or other issue (born in his lifetime), as he shall by deed or will appoint, and, subject thereto, to transfer the same trust fund unto such child or children of my

Direction to invest 4,000*l.* or appropriate securities to that amount;

in trust for nephew for life, and after his death for his issue.

(*d*) Regard must be had to the rules against perpetuities.

(*e*) As to protective trusts, see T. A. 1925, s. 33.

(*f*) See also *post*, "Trusts of Residue," pp. 554 *et seq.*, where alternative forms of trusts will be found.

SETTLED LEGACIES.

said nephew as being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry, in equal shares [as between sons or as between daughters, but so that the share of a son shall be double the share of a daughter]. PROVIDED, that no child shall take, both by appointment and in default of appointment, a greater share than he or she would have taken if no appointment had been made. AND if there shall be no child of my said nephew who, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, subject to any such appointment as aforesaid, I declare that my trustees shall hold the said trust fund upon trust to pay, apply, and transfer the same, and the future income thereof, upon such trusts and in such manner as are herein declared and mentioned with respect to my residuary personal estate.

Hotchpot.

Bequest of a sum, with interest till payment, to trustees, upon trust for investment;

2*a*. I BEQUEATH to my trustees the sum of £——, with interest thereon at the rate of 4 per cent. per annum from the day of my death, and clear of death duties and all other deductions, upon trust, to invest the same sum in or upon any of the investments hereby authorised, with power to vary such investments; AND I direct that my trustees shall stand and be possessed of and interested in the said trust moneys, and the investments representing the same (hereinafter called "the trust fund") (*g*). Upon trust, from time to time to pay the income arising therefrom to my said daughter, [*name*], for her life, but without power of anticipation: AND from and after her death,—

trusts of settled legacy for inalienable use of married daughter for life;

power for daughter to appoint life interest in a moiety to husband;

2*b*. UPON TRUST, in case my said daughter, [*name*], whether married or sole, shall by deed, or will, or codicil so appoint, to pay unto any surviving husband (born in my lifetime) of my said daughter, during his life or for any less period to be so appointed by my said daughter [any part not exceeding one-half of] the income of the trust fund; AND, subject to any such payment to be so appointed as aforesaid, Upon trust to pay or transfer the trust fund, unto or among such one or more of the children, or more remote issue, of my said daughter (such issue to be born in

trusts for daughter's issue, as she shall appoint;

(*g*) It may be convenient, if there are other settled funds, to describe this fund as "——'s trust fund," giving the name of the legatee.

SETTLED LEGACIES.

the lifetime of my said daughter), and at such time or times, and, if more than one, in such shares and proportions, and subject to such conditions, restrictions, and limitations, and generally in such manner, for the benefit of some or one of such children or issue, as my said daughter, [*name*], shall, whether covert or sole, by deed, revocable or irrevocable, or by will or codicil appoint. PROVIDED that no child or other issue of my said daughter, [*name*], shall take a vested or absolute interest under any such appointment as aforesaid, until such child or issue shall attain the age of twenty-one years, or (being a girl) shall attain that age, or be married (*h*); AND in default of and subject to any such appointment, upon trust for such child or children of my said daughter, [*name*], as (being a son or sons) shall attain the age of twenty-one years, or (being a daughter or daughters) shall attain that age or be married, and also the child or children of any son of my said daughter who shall die under the age of twenty-one years, and if more than one, to be divided between or among them in equal shares and proportions, as between brothers and sisters, but so that the child or the children collectively of any deceased son of my said daughter shall take only the share which such son would have taken if living, and if more than one, in equal shares and proportions. [PROVIDED ALWAYS, that no child or grandchild of my said daughter, [*name*], who or whose issue shall take any share or shares of the trust fund by virtue of any appointment to be made by my said daughter under the power hereinbefore contained shall, without any express direction to that effect in such appointment to be contained, be entitled to any share of the unappointed part of the trust fund under the limitations or trusts in default of appointment hereinbefore contained, unless such child or grandchild shall bring the share or shares appointed to him or her into hotchpot, and account for the same accordingly]: AND in case there should be no child of my said daughter, [*name*], who (being a son) shall attain the age of twenty-one years, or (being

appointee not to take a vested interest while under age and discovert;

in default of appointment, for her sons at twenty-one or daughters at twenty-one or marriage.

Substitution of children of sons dying under twenty-one;

hotchpot clause (*i*);

in default of issue to take under foregoing trusts,

(*h*) The design of this clause is to prevent an absolute appointment to a child at a very early age and in precarious health, in order that at the death of the child the appointed fund may devolve to the parents, who, on taking out administration, would become entitled to the personal property of such deceased: see A. E. A. 1925, s. 46 (1) (iii).

As to restriction on appointments to infants.

(*i*) This clause is now unnecessary, but may in certain cases be inserted for the information of the trustees: see T. A. 1925, s. 32 (1).

SETTLED LEGACIES.

a daughter) shall attain that age or be married, or if there shall be no child of any son of my said daughter who shall die under the age of twenty-one years, then (subject to any such appointment as aforesaid): upon trust to pay or transfer the trust fund, and the income thereof, unto or for the benefit of such person or persons, upon such trusts, for such purposes, and in such manner and form as my said daughter, [*name*], shall, by deed, or will, or codicil, appoint: And in default of such appointment, and so far as any such appointment shall not extend: Upon trust for the persons who would be the statutory next of kin of my said daughter if any husband of hers living at her death had died immediately before [*or*, upon trust for my said daughter]: Provided always, and I hereby declare, that it shall be lawful for my trustees, at any time or times in the lifetime of my said daughter, [*name*], with her consent in writing, and after her death [with the consent in writing of her surviving husband (if any), and after the death of my said daughter and of her surviving husband (if any)] at the discretion of my trustees, to raise any part or parts not exceeding in the whole one-half of the fund or share to which any child or issue of my said daughter shall be presumptively or actually entitled, and to pay or apply the same for the advancement or benefit of such child or issue, in such manner as my trustees shall think fit.

power for daughter to appoint generally by will, or, while discovert, by deed; in default of appointment for daughter's next of kin; power to advance portions.

3. [*Legacy to trustees, with power to invest and vary securities, &c., as in Form* 2]. And I direct that my trustees shall hold the said sum of £——, and the investments representing the same (hereinafter called "the trust fund") (*k*), upon trust to pay the income arising from the trust fund unto my sister-in-law [*name*], the widow of my late brother [*name*], for her life; And after her death to apply a competent part of the trust fund for her funeral expenses, in case she should not leave sufficient property for that purpose; And, subject thereto, to divide the trust fund, or the residue thereof, among such of her five children, namely [*names*], as shall be living at the time of the death of the survivor of myself and my said sister-in-law, and such child or children then living of any of her said children who may then be dead, as shall attain the age of twenty-one years, or marry under that age, in equal shares

Legacy in trust for widow for life; on her death to apply part of capital for her burial; and to divide the surplus among the survivors of five children and the issue of those who may be dead.

(*k*) See note (*g*), p. 526.

and proportions, as between or among brothers and sisters; but so that the child or the children collectively of any such deceased child of my said sister-in-law shall take such share only as his, her, or their parent would have taken if living. SETTLED LEGACIES.

4. I BEQUEATH to my trustees the sum of £——, to be retained and appropriated by them within six calendar months after my death, and, if not then appropriated, with interest at 4 per centum per annum from the expiration of the said six months, upon trust, to invest [*power to invest and vary investments, Form* 1 *or Form* 2], and to stand possessed thereof, upon the trusts following (that is to say), upon trust, to hold the income of the said trust fund for the benefit of my aunt [*name*], for her life, upon protective trusts, but without power of anticipation, subject nevertheless to the proviso hereinafter contained; AND from and after her death, upon trust, to pay or transfer the said trust fund unto and between such of the daughters of my said aunt, namely, [*names*], as shall be living at my death, or their respective personal representatives, in equal shares; AND I declare, that in case at any time or times hereafter the said [*aunt*] should, from infirmity or any other cause, be incapable of giving a discharge for the said income, it shall be lawful for my trustees to apply the same in such manner for her benefit as they, in their discretion, shall think proper (*l*).

Legacy to trustees, to be invested; in trust for inalienable use of testator's aunt (a married woman) for life; and after her death, upon trust for her daughters, *nominatim*; if *cestui que trust* becomes imbecile, &c., trustees may apply income for her benefit.

5. I BEQUEATH unto each of my five daughters, [*names*], or such of them as shall be living at the time of my death, the sum of £——. AND I direct that my said five daughters shall have vested interests in their respective legacies immediately upon my death; but the payment thereof shall be postponed until after the death or marriage as aforesaid of my said wife, and without interest in the meantime. PROVIDED ALWAYS, that in case any of my five daughters hereinbefore named should happen to marry during the widowhood of my said wife, with the consent or subsequent approbation of her or their guardian or guardians for the time being, then it shall be lawful for my trustees [*or*, the trustees or trustee

Legacies to unmarried daughters to vest immediately, but payable at the death or marriage of the wife; power of advancing one-half on marriage;

(*l*) This trust is adapted to the case of a person who is subject to attacks of lunacy or labours under any other species of mental imbecility. A trust in favour of a deaf and dumb person also requires some such provision. As to trusts in favour of persons of weak mind, &c.

SETTLED LEGACIES.

for the time being of my will] [*or*, of the trust fund hereinafter provided for the payment of the said several legacies of £—— each], during the widowhood of my said wife, with her consent (testified by writing under her hand), to raise and pay to each such daughter so marrying as aforesaid one moiety of her said legacy of £——, for her absolute use and benefit. And I declare that it shall be lawful for my trustees [*or*, the said trustees or trustee] and my said wife, if they should think proper, to settle the said moiety of the legacy or respective legacies, the payment whereof shall be accelerated under this present provision, of any daughter or daughters of mine so as aforesaid marrying during the widowhood of my said wife, upon trust for the benefit of such daughter or daughters, and her or their intended husband or husbands, and the issue of such marriage or marriages, or for the benefit of some one or more of such objects, in such manner in all respects, and with such accompanying powers and provisions as my said wife and trustees (either with or without the concurrence of such marrying daughter or daughters) shall think proper. And I direct and declare that my trustees, upon their paying or transferring to the trustees or trustee of any settlement or settlements to be made as aforesaid, the moiety so settled of the legacy or legacies of such daughter or respective daughters of mine marrying as aforesaid, shall be exonerated and discharged from all further responsibility in respect thereof.

power to wife and trustees to settle moiety of legacies of daughters marrying during widowhood of wife.

BEQUESTS OF LEASEHOLDS (*b*).

Bequest of house and stabling in London to one.

1. I bequeath my leasehold messuage[s] or dwelling-house[s], &c., with the appurtenances, unto [*legatee*], of, &c., for all the residue unexpired at the time of my death, of the term[s] for which the same premises [respectively] are holden, he, the said [*legatee*], paying the rents reserved by, and at his own cost performing and observing the lessee's covenants and conditions con-

(*b*) For a form of bequest of leaseholds with an appointment of the legatee as special executor in respect thereof, see *ante*, p. 464, Form 11. Leaseholds are "real property" for the purpose of sect. 1 of the Succession Duty Act, 1853.

tained in the [several] lease[s] under which the same premises are holden [respectively], and keeping my general estate indemnified in respect thereof.

BEQUESTS OF LEASEHOLDS.

2. I BEQUEATH my leasehold messuage or dwelling-house, now in the occupation of [*tenant*], with all rights, easements, and appurtenances belonging to, or reputed to belong thereto, or held or enjoyed therewith (*c*), unto [*trustee*], of, &c., and [*trustee*], of, &c. [*or*, the trustees hereinbefore appointed], their executors, administrators, and assigns, for all the residue unexpired at the time of my death, of the term for which the same premises are holden, and subject to the rent reserved by, and to the lessee's covenants and conditions contained in the lease under which the same premises are holden, upon trust that the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being of the same premises [*or*, my trustees], shall, by and out of the rents and profits thereof [*or*, out of the income of my general personal estate], pay the rent reserved by the said lease, and all necessary outgoings in respect of the said leasehold premises, and the expenses of keeping the same premises insured and in good repair, and otherwise performing and observing the lessee's covenants and conditions contained in the said lease; AND upon trust to pay the [residue of] the rents and profits of the said leasehold premises unto my wife, [*name*], during her life; AND, after her death, upon trust to assign the same premises unto my son, [*name*], his executors, administrators, or assigns, absolutely (*d*).

Bequest of leasehold house and grounds, &c. in the country to trustees.

(*c*) A gift of a house "as now in the occupation of A." will not of itself pass an easement enjoyed by A. as occupant: *Polden* v. *Bastard*, L. R. 1 Q. B. 156. The necessity for inserting the words in the text is not done away with by sect. 62 of the L. P. A. 1925, as that section imports "general words" only into "conveyances" as defined by sect. 205 (ii) of the Act. The rule laid down in *Palmer* v. *Fletcher*, 1 Lev. 122, that under a conveyance *inter vivos* the grantee is entitled to such easements and rights as are necessary for the enjoyment of the property in the state in which it was enjoyed by the grantor at the time immediately preceding the grant, applies to gifts by will: *Phillips* v. *Low*, [1892] 1 Ch. 47; and see *Taws* v. *Knowles*, [1891] 2 Q. B. at p. 570.

(*d*) For a form giving to the remainderman full power of enforcing the tenant for life's obligations to repair, &c., see *post*, p. 541, Form 24.

BEQUESTS OF LEASEHOLDS.

Bequest of house and furniture, &c., to wife for life or during widowhood;

3. I BEQUEATH my leasehold messuage or dwelling-house, with the stabling, &c. held therewith, situate, &c., which premises I hold under a lease, dated, &c., for all the residue (if any) which shall be unexpired at the time of my death, of the term for which the same premises are holden, and also all my fixtures, furniture, and household effects (*e*) in, about, and belonging to the said leasehold premises unto my wife [*name*], during her life [or until she shall marry again], she paying all rents, taxes, rates, assessments, and outgoings in respect of the said leasehold premises, and keeping the same insured against loss or damage by fire to the full value thereof, and also keeping the said furniture and effects insured and in good preservation, fair wear and tear excepted;

with remainder to son absolutely.

AND from and after the death [or second marriage] of my said wife I bequeath the said leasehold premises for all the residue then unexpired of the said term, and the said fixtures, furniture, and effects to my son, [*name*], his executors, administrators, and assigns, absolutely (*f*).

Bequest of leasehold messuage to trustees to permit his wife to occupy it for her residence; and after her death, or if she should decline to reside, upon trust to sell same;

4. I BEQUEATH to the said [*trustees*], ALL THAT, my leasehold messuage, situate, &c., and the stables, buildings, and other appurtenances thereunto belonging, for all the term and interest which I shall have therein at the time of my death, upon trust to permit my said wife to reside in and occupy the said leasehold premises so long as she shall think proper, she paying the ground rent, taxes, and rates payable in respect of the same, and keeping the said premises in good and tenantable repair, and insured in the sum of £—— against loss or damage by fire during the period of such residence; and from and after the death of my said wife, or so soon as she shall decline or, for the space of six calendar months consecutively, cease to reside in or occupy the said leasehold premises (*g*),

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These powers would, of course, in the case of leaseholds, be given to the remainderman, "his legal personal representatives."

(*e*) For full and particular bequests of furniture and effects, see *ante*, p. 472, Forms 14 *et seq.*

(*f*) See note (*d*) on preceding page.

Conditions of residence.

(*g*) Where a testator imposes an obligation to reside, it should be explicitly stated what length of continuous absence amounts to a breach of the condition: see, on this point, *Doe* v. *Steward*, 3 N. & M. 372; *Re Moir*, L. R. 25 Ch. D. 605. See also, as to conditions of residence, *Wynne* v. *Fletcher*, 24 Beav. 430; *Walcot* v. *Botfield*, Kay, 534; *Clavering* v.

BEQUESTS OF LEASEHOLDS.

then I direct that my trustees shall sell the said leasehold messuage and premises. PROVIDED ALWAYS, that no purchaser of the said leasehold premises shall be bound to inquire whether my said wife has so declined or ceased to reside in and occupy the same or not. AND I direct that the money to arise by such sale shall fall into and form part of my residuary personal estate. AND I empower my trustees, in their discretion (notwithstanding the trusts aforesaid), to postpone the sale of the said leasehold premises so long as they shall think proper, and during such postponement to pay the net rents and profits thereof to the person or persons for the time being entitled to the income of my residuary personal estate. AND I further empower my trustees, at their discretion, until the said leasehold premises shall be sold, to lease the same premises for any term or terms in possession, not exceeding —— years, at the best rent that can be obtained without taking fine or premium, subject to a power of re-entry in case the rent should be in arrear for twenty-one days. AND I declare that my trustees shall be fully indemnified out of my residuary estate against all costs, damages, losses and expenses which may be incurred by them by reason of the non-payment of the rent reserved by, or the non-observance or non-performance of the covenants contained in the lease under which the said premises are holden, or otherwise in respect of the said leasehold premises (*h*).

moneys arising from sale to form part of personal estate;

power to postpone sale;

power to lease.

5. I BEQUEATH all my improved ground rents issuing out of six leasehold messuages or tenements situate and being Nos. — to — inclusively, in —— Street, in the City of ——, for all the residue unexpired at my death of my term and interest in the same premises respectively to [*legatee*], of, &c., absolutely.

Bequest of leasehold ground rents.

Ellison, 7 H. L. C. 707; *Parry* v. *Roberts*, 19 W. R. 378; *Dunne* v. *Dunne*, 7 De G. M. & G. 207; *Re Wright*, [1907] 1 Ch. 231; *Re Simpson*, [1913] 1 Ch. 277; *Re Gibbons*, [1920] 1 Ch. 372; *Re Boulter*, [1922] 1 Ch. 75; and as to condition of residence in case of an infant, see *Partridge* v. *Partridge*, [1894] 1 Ch. 351. As to the right of a tenant for life to sell the property, see *Re Simpson* (*supra*), and sect. 106 of the S. L. A. 1925.

(*h*) As to perpetually renewable leases and underleases, see L. P. A. 1922, Schedule 15 (as amended by the Act of 1924); as to leases or underleases for lives or determinable on marriage, see L. P. A. 1925, s. 149 (6).

SPECIFIC DEVISES.

SPECIFIC DEVISES.

Devise of freehold messuage and lands to one absolutely (*i*).

1. I DEVISE all my freehold mansion-house, with the stables, coach-house, outbuildings, gardens, and closes of land belonging to or held with the same, situate at ——, in the county of ——, containing in the whole —— acres, —— roods, and —— poles, or thereabouts, and commonly known as ——, now in the occupation of [*occupant*] (*k*), with all rights, easements, and appurtenances belonging or reputed to belong thereto, or held and enjoyed therewith (*l*), unto [*devisee*], of, &c., in fee simple (*m*).

Bequest of rents due at testator's death.

[AND I bequeath to the said [*devisee*] all rents and profits of the same hereditaments which shall be due or accruing due to me at my death, subject to the payment thereout of all rates, taxes, and outgoings due or accruing due at my death in respect of the same hereditaments, or properly chargeable against the same in the ordinary course of management.]

Devise of freeholds to a woman with restraint on anticipation.

2. I DEVISE all [*parcels*], with the appurtenances thereof, unto [*devisee*], the wife of [*name*], of, &c., in fee simple, but so that she shall not while under any [*or*, her present] coverture have power to dispose of or charge the said hereditaments and premises, or any

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(*i*) For a form of devise to trustees, see *post*, p. 595, Form 1.

Reference to occupation.

(*k*) Disputes often arise as to the local extent, &c. of devised lands, and clearness in this respect is important. Where lands are described merely as "all my lands *at* A. in the occupation of B.," only lands actually in the occupation of B. will pass: *Slingsby* v. *Grainger*, 7 H. L. C. 273; *Travers* v. *Blundell*, 6 Ch. D. 436. The question is which is the leading description: *Re Brocket*, [1908] 1 Ch. 185; *Re Fuller*, 59 S. J. 304. But if the testator give a complete description of his estate, *e.g.*, "all my lands called 'Whiteacre' at A. in the occupation of B.," all the estate may pass, though part may not answer the description as to occupation: *Goodtitle* v. *Sotheran*, 1 M. & S. 299; *Down* v. *Down*, 7 Taunt. 343; *Be Boulter*, 4 Ch. D. 241.

(*l*) See, as to the necessity for inserting these words, *ante*, p. 531, note (*c*).

(*m*) In the absence of a contrary intention appearing by the will, a devise without words of limitation will pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will. (See sect. 28 of the Wills Act, 1837.) But the addition of the words in fee simple precludes any possibility of doubt as to the intention and are therefore desirable. Cp. sect. 60 of the L. P. A. 1925, as to a conveyance without words of limitation.

part thereof, or the future rents and profits thereof, by way of anticipation. SPECIFIC DEVISES.

Devise of freeholds for the use of a woman, inalienable during coverture (*n*).

3. I DEVISE unto my said trustees in fee simple, all that [*parcels*], In trust for such person or persons for such interests and generally in such manner in all respects as my daughter, [*name*], shall at any time or times (being unmarried) by deed appoint; AND in default of and subject to any such appointment, In trust for my said daughter during her life for her inalienable use and benefit; AND, subject thereto, In trust for such person or persons for such interests and generally in such manner in all respects as my said daughter shall (whether married or single) by will or codicil appoint; AND, subject thereto, In trust for the person or persons who at my daughter's death would, under the Administration of Estates Act, 1925, be entitled thereto by descent in case she had died seised thereof in fee simple by purchase and intestate, such persons, if more than one, to take the shares which they would have taken under that Act.

Devise of lands to an infant, with appointment of trustees for management, &c.;

gift over in case of death under twenty-one.

4. I DEVISE all [*parcels*] to [*devisee*], of, &c., in fee simple: AND if the said [*devisee*] shall not be of age at the time of my death, I appoint my trustees to be trustees during his minority for the purposes of the management of the same premises and the receipt and application of the income thereof, and for all other purposes mentioned in the 102nd section of the Settled Land Act, 1925: BUT if the said [*devisee*] shall die in my lifetime [without leaving issue living at my death], or shall die afterwards before attaining the age of twenty-one years without leaving issue living at his death, then I devise the same premises to [*other devisee*], of, &c., absolutely.

(*n*) These limitations will have the effect of preventing the property (unless the power is exercised by the devisee) from being liable, as her separate estate, for her debts contracted during coverture: see *Re Harvey's Estate, Godfrey* v. *Harben*, 13 Ch. D. 216; see also *Pike* v. *Fitzgibbon*, 17 Ch. D. at p. 466; *Hodges* v. *Hodges*, 20 Ch. D. 749; *Re Roper* 39 Ch. D. 482. As to land acquired after the date of will, but coming under the same description, see *In re Harton*, [1920] 2 Ch. 1.

SPECIFIC DEVISES.

Specific devise of real estate and bequest of leaseholds.

5. I DEVISE and bequeath all my freehold and leasehold messuages, lands, tenements, and hereditaments situate in the several parishes of —— and ——, in the county of ——, unto [*devisee*], of, &c., absolutely.

Devise of freeholds so as not to lapse (*p*).

6. I DEVISE all [*parcels*] unto [*devisee*], of, &c., in fee simple, if he shall survive me; AND if he shall die in my lifetime leaving issue surviving me, then I devise the same hereditaments and premises to the personal representatives of the said [*devisee*] as part of his estate, in such manner as the same would have devolved if the said [*devisee*] had survived me and had died seised thereof immediately after me.

Specific devise of freeholds to nephew; if sold, the purchase-money in lieu (*q*).

7. I GIVE my freehold lands at ——, which were conveyed to me by an indenture, dated, &c., unto my nephew, [*name*], in fee simple; AND, in case a contract which is now pending for the sale thereof be carried into execution, or in case the same lands, or any part thereof, be under any circumstances sold, then I give to my said nephew the purchase-money which I or my executors shall receive for the same. AND I direct that all the costs of and incident to the said contract, whether the same be completed or not, shall be paid [out of my residuary personal estate and not] out of the said purchase-money.

Devise of freeholds contracted to be purchased. The purchase-money to come out of personal estate.

8. I GIVE my messuage, &c. at ——, which I hold under a lease, dated, &c., but the freehold of which I have recently contracted to purchase, to [*devisee*], of, &c., and his legal personal representatives. AND in case the purchase thereof shall not be completed in my lifetime, the purchase-money for the same, and all costs and expenses of or incidental to the completion of the said purchase, shall be paid out of my general personal estate (*r*).

(*p*) This form is necessary to carry out the intention indicated, where the gift is not to a child or other issue of the testator: see sect. 33 of the Wills Act.

(*q*) Where a testator devises an estate and subsequently contracts to sell it, the devisee is not entitled to the purchase-money, in the absence of express provision to that effect in the will: *Moor* v. *Raisbeck*, 12 Sim. 123; *Farrar* v. *Earl of Winterton*, 5 Beav. 1; *Re Clowes*, [1893] 1 Ch. 214.

(*r*) See *Re Kershaw*, 37 Ch. D. 674.

SPECIFIC DEVISES.

9. I DEVISE unto my said trustees [*parcels*], In trust for such person or persons for such interests and generally in such manner in all respects as [*illegitimate child*] shall by deed or will appoint; AND, subject thereto, to the said [*child*] in tail, with remainder to the person who would have been my heir under the general law before 1926.

Devise to an illegitimate child so as to prevent devolution as *bonâ vacantia* (*s*).

10. I DEVISE all [*parcels*] to my son, [*name*], absolutely: AND I declare that any arrears of interest which shall be owing on any mortgage charge or incumbrance affecting the same hereditaments and premises at the time of my death shall be paid out of my general personal estate, in exoneration of such hereditaments and premises.

Devise of land *cum onere* except as to arrears of interest (*t*).

11. I DEVISE all [*parcels*] to [*devisee*], absolutely, free and discharged from all principal moneys and interest charged thereon by an indenture of mortgage dated, &c., and made between [*parties*] [*or*, by any mortgage or mortgages, and from any other charges or incumbrances affecting the same hereditaments, or any part thereof, at the time of my death]; AND I declare that all such principal moneys and interest shall be paid out of my personal estate, in exoneration of the said hereditaments and premises.

Devise of lands free from mortgage.

12. I DEVISE all [*parcels*] to [*devisee*], of, &c., absolutely, subject to and charged with the payment of the legacy of £—— hereinbefore bequeathed to the said [*legatee*] in exoneration of my personal estate and of all other my real estate.

Devise of freeholds charged with a legacy. (Short form.)

13. I DEVISE all [*parcels*] to my trustees In trust that [*legatee*] may receive thereout (in exoneration of my personal estate and all other my real estate) an annuity of £—— during his life to

Devise of freeholds, subject to a charge of an annuity;

(*s*) By Administration of Estates Act, 1925, ss. 45 (1) (d) and 46 (1) (vi), escheat is abolished, and is replaced by a right to the land, as *bonâ vacantia*, in the Crown, the Duchy of Cornwall, or the Duchy of Lancaster, according to the locality of the land.

(*t*) It is not necessary in a devise of mortgaged lands to direct that the devisee shall take *cum onere:* see Administration of Estates Act, 1925, s. 35, which consolidates Locke King's Acts, and extends the effect thereof to personal estate. But where any modification of the statutory liability is intended, such intention must be expressed.

SPECIFIC DEVISES.

commence from the day of my death, and to be payable to him by half-yearly [*or*, quarterly] payments on the —— day of —— and —— day of —— [*or*, on the usual quarter days], the first payment to be an apportioned payment if for a broken half-year [*or*, quarter] to be made on such of the said days as shall happen next after my death; AND subject to the said annuity and charge, and to the powers and remedies for recovering the same, to [*devisee*] absolutely. PROVIDED that if the said charge should fail by lapse or otherwise, such failure shall be for the benefit of the said [*devisee*] or the persons deriving title under him.

power of distress and entry; proviso for lapse.

Devise in fee subject to debts, &c. (Short form.)

14. I DEVISE all [*parcels*] subject to and charged with the payment of my debts, funeral and testamentary expenses and legacies in exoneration of my personal estate unto [*devisee*], of, &c., absolutely.

Devise of freeholds to trustees of a settlement.

15. I DEVISE all [*parcels*] to [*trustee*], of, &c., and [*trustee*], of, &c., in fee simple, upon the trusts and with and subject to the powers and provisions declared and contained by and in an indenture of settlement, dated, &c., and made between [*parties*] concerning the freehold hereditaments therein and thereby comprised and settled, or such of the same trusts, powers, and provisions as shall at the time of my death be subsisting and capable of taking effect (*u*), but not so as to multiply charges or powers of charging (*x*).

Devise to trustees on trust for sale and to divide proceeds as directed.

16. I DEVISE all [*parcels*] to [*trustees*] upon trust to sell the same and to divide the proceeds of sale between [——] and [——] in equal shares. But, if either of the said [*beneficiaries*] should be dead at my death, or should afterwards die under the age of twenty-one years, without leaving issue living at my death, upon trust to pay the whole of such proceeds of sale unto the other of them, absolutely.

(*u*) As to the meaning of these words, see *Re Finch and Chew*, [1903] 2 Ch. 486; and see also, as to the effect of inserting words which may include trusts to be declared in the future, *Re Fane*, [1913] 1 Ch. 404.

(*x*) See *Re Beaumont*, [1913] 1 Ch. 325.

SPECIFIC DEVISES.

17. I DEVISE unto my said trustees all [*parcels*] upon trust to sell the same and to divide the proceeds of such sale among [*beneficiaries*] in equal shares. But I direct that the share or shares (as well accrued as original) of such of them as shall be dead at my death, or shall die under the age of twenty-one years without leaving issue at his, her, or their death or deaths, shall pass to the others or other of them absolutely in equal shares.

Devise upon trust for sale and to divide the proceeds among beneficiaries equally, with cross (*y*).

18. I DEVISE all [*parcels*] to [*trustees*] upon trust to sell the same and to divide the proceeds of such sale between [amongst] my children, [*names*], in equal shares.

Devise to trustees in trust for children *nominatim* (*z*).

19. I DEVISE all [*parcels*] to my trustees upon trust that my trustees shall sell the same and divide the net proceeds of sale amongst all my children [*or*, the children of [*name*]] living at my [*or*, at his] death, and the issue then living of such of them as shall be then dead leaving issue living at my [*or*, at his] death in equal shares as between brothers and sisters, but so that the issue of any child so dying shall take between them only the share which their parent would have taken if living.

Devise to trustees upon trust for sale and to hold proceeds for children as a class with substitution of issue.

20. I DEVISE all my freehold hereditaments at —— unto [*name*], of, &c., during his life, without impeachment of waste; with remainder to his widow, if any, during her life, without impeachment of waste; with remainder to the personal representatives of the said [*devisee*] on trust to sell the same and to hold the net proceeds of such sale in trust for the children of the said [*devisee*] as tenants in common in tail, with cross-remainders, as to shares, both original and accrued, in tail between them; with

Devise for life, with remainder in trust for children of devisee as equitable tenants in common in tail (*a*).

(*y*) See S. L. A. 1925, s. 36, and L. P. A. 1925, s. 34.

(*z*) Under this devise the share of every child who dies in the lifetime of the testator, leaving issue living at his death, will not lapse, but will take effect as if the child had died immediately after the death of the testator (see sect. 33 of the Wills Act), and, accordingly, will pass to the devisee or heir of such child. As to estate duty, see *Re Scott*, [1901] 1 K. B. 228.

(*a*) By sect. 36 (4) of the S. L. A. 1925, "an undivided share in land shall not be capable of being created except under a trust instrument or under the L. P. A. 1925, and shall then only take effect behind a trust for sale." See also sect. 34 of the L. P. A. 1925. A will is a trust instrument for the purposes of the S. L. A. 1925: see sect. 6.

SPECIFIC DEVISES.

remainder to the person who would have been the heir of the said [*devisee*] under the general law in force before 1926 (*b*).

Devise to trustees upon trust to sell and divide proceeds equally between several (*c*); remainder to trustees for sale for benefit of surviving issue of devisees for life, *per stirpes;*

21. I DEVISE all [*parcels*] to [*trustees*] upon trust to sell the same and to divide the income of the proceeds of such sale between [*beneficiaries*] (hereinafter in this clause called the "said beneficiaries for life"), during their respective lives, in equal shares; with cross-remainders as to the share or shares of each of them, whether original or accrued, to the others or other of them, for their respective lives, or his or her life; AND, after the death of the survivor of them, upon trust to pay such proceeds of sale to such child or children living at the death of such survivor of any of the said beneficiaries for life, and such issue then living of any previously deceased child or children of any of the said beneficiaries for life as shall attain the age of twenty-one years or marry, if more than one in equal shares *per stirpes;* except that no child of any grandchild shall be included in this gift if such grandchild be then living; AND that the child or children of any

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(*b*) Under L. P. A. 1925, s. 176, a tenant in tail in possession may dispose of the estate tail by will. The devise or bequest by which this is done must refer specifically to (i) the property, or (ii) the instrument under which the property was acquired, or (iii) entailed property generally. Property which may be thus disposed of is (i) property whereof the testator is tenant in tail in possession at his death, and (ii) money subject to investment in buying property whereof, after such investment, the testator would have been tenant in tail in possession at his death.

(*c*) Trustees of a settlement (created by will or otherwise) to whom capital money is to be paid must number at least two, save in the case of a trust corporation, which may be a sole trustee. In the case of a settlement created after 1925, not more than four trustees shall be appointed, and in the case of settlements executed before that date, no new trustees shall be appointed unless or until there are less than four, but in settlements where there are less than four the number may be brought up to four even though there is no vacancy. This numerical limit, however, does not apply to land vested in trustees for charitable, ecclesiastical or public purposes, or where the proceeds of the sale of land are held for such purposes, or to trustees of a term of years absolute limited by a settlement upon trusts for raising money. Where a life estate arises under a will or an intestacy, representation shall be granted either to a trust corporation (with or without an individual) or to at least two individuals. (See S. L. A. 1925, s. 94; L. P. A. 1925, s. 27 (2); T. A. 1925, ss. 34 and 36; and A. E. A. 1925, s. 12.)

deceased child or grandchild shall take only such share as his, her, or their parent or parents would have taken if they, he, or she had lived to take a vested interest in such share; AND if there should be no such issue I direct that such proceeds of sale shall form part of my residuary personal estate; AND until the final distribution of such proceeds of sale, I direct my trustees to invest the same in or upon any of the investments hereby authorised, with power to vary investments at their discretion: [*add advancement clause, if required, see* post, *p.* 579].

SPECIFIC DEVISES.

ultimate gift;

investment.

22. I DEVISE [*parcels*] to [*devisee*], of, &c., and [*other devisee*], of, &c., during their joint lives: AND after the death of such one of them as shall first die I devise the whole of the same hereditaments and premises to the other of them for his life: AND after the death of the survivor of them, the said [*devisees*], I declare that the said hereditaments and premises shall sink into and form part of my residuary real estate.

Devise to several for their lives jointly, with remainder over (*d*).

23. I DEVISE the freehold messuage, outbuildings, garden, and premises at ——, which I purchased of ——, to my wife, [*name*], during her life; and after the death of my said wife, I devise the said premises to the said [*eldest son*] in fee simple.

Devise to wife for life, then to son in fee.

24. I DEVISE my house at ——, with the garden and appurtenances, unto my wife, [*name*], during her life (*e*) or so long as she shall continue my widow and make the same her principal residence, and shall keep the same in substantial repair and insured against loss or damage by fire; AND so soon as she shall die, or marry again, or cease to reside in such house for more

Devise to wife for life, with condition as to residence, &c. (*f*), with remainder to son in fee;

(*d*) As to the effect of such a devise, see sect. 34 (3) of the L. P. A. 1925.

(*e*) The legal estate will vest in the testator's executors (A. E. A. 1925, s. 1), who will hold the land on trust as provided by sect. 6 of the S. L. A. 1925.

(*f*) The effect of this devise would seem to be that though breach of the condition as to residence before alienation of the property by way of sale or lease might defeat the widow's life interest if she were to absent herself for more than the prescribed period (*Re Haynes*, 37 Ch. D. 306), yet she might at any time sell or lease the property under the statutory powers of a tenant for life: see sect. 20 (vi.) of the S. L. A. 1925. And it has been held that, having regard to the relief against forfeiture con-

Conditions as to residence.

SPECIFIC DEVISES.

than —— calendar months in any year, or to keep the same in repair or insured as aforesaid, I devise the same house unto my son, [*name*], in fee simple. AND, in case my said wife should at any time neglect to keep the said messuage and premises, or any of them, in such repair and condition, and insured as aforesaid, it shall be lawful for my said son to supply or repair such neglect, default, or omission, in such manner and to such extent as he shall think proper: AND to recover the expenses of so supplying or repairing any such neglect, default, or omission of my said wife as aforesaid, together with interest thereon after the rate of 5 per cent. per annum, and all costs incident to the recovery thereof, by entry upon and receipt of the rents and profits of all or any part of the said messuage and premises so devised to my said wife for her life, or by mortgaging or selling the life interest of my said wife therein.

Power for remainderman to repair on default of wife.

Devise of advowson to trustees (*g*); in trust to sell;

25. I DEVISE all that my advowson of the Rectory of ——, to the said [*trustees*] upon trust that my trustees shall sell the said advowson, subject to such stipulations as to postponement of payment of or security for the purchase-money, or otherwise, as they may think fit; AND I declare that the proceeds of such sale shall form part of my residuary personal estate. PROVIDED ALWAYS, that my trustees may, with the consent of my said wife, during her life, and after her death, at their discretion, postpone such sale for such period as they shall think fit; AND if and so often as a vacancy shall occur in the said living, prior to the sale of the said advowson, may present some fit and duly qualified person thereto; AND I declare that if, upon any such

authority, with wife's consent, to postpone sale of advowson, for the purpose of presenting a son of testator.

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tained in sect. 51 of the S. L. A. 1882 (re-enacted by sect. 106 of the S. L. A. 1925), she would be entitled to a life interest in the purchase-money or rent: *Re Paget's S. E.*, 30 Ch. D. 161; *Re Eastman*, 68 L. J. Ch. 122; *Re Edwards' Settlement*, [1897] 2 Ch. 412; *Re Carne's S. E.*, [1899] 1 Ch. 324; *Re Richardson*, [1904] 2 Ch. 777; *Re Simpson*, [1913] 1 Ch. 277; *Re Bayer's S. E.*, [1916] 2 Ch. 404; *Re Anderson*, [1920] 1 Ch. 175; *Re Gibbons*, [1920] 1 Ch. 372; *Re Boulter*, [1922] 1 Ch. 75.

(*g*) No estate duty is payable in respect of an advowson: see *Att.-Gen.* v. *Peek*, [1913] 2 K. B. 487, C. A. As to sale of advowsons, see the Benefices Act, 1898, and the Benefices Act, 1898 (Amendment) Measure, 1923.

SPECIFIC DEVISES.

vacancy occurring, any son of mine shall be qualified and willing to accept the said living, and shall, in the opinion of my trustees, be a fit and proper person to hold the same, my trustees shall present him thereto; AND in case more than one son of mine should desire to be presented to the said rectory, the elder of such sons shall be preferred.

Provision that death duties shall be payable out of residue (*h*).

26. I DECLARE that all death duties payable on my death in respect of the said —— and hereditaments at —— hereinbefore devised, shall be borne and paid by and out of my residuary estate in exoneration of the said —— and hereditaments.

GIFTS OF RESIDUE.

Personalty to wife.

1. I BEQUEATH all the residue of my personal estate and effects, whatsoever and wheresoever (including [*or*, except] leaseholds for years and other chattels real), after payment thereout of my debts, funeral and testamentary expenses, and of the legacies bequeathed by this my will or any codicil hereto (*i*), unto my wife, [*name*], absolutely.

Personalty to son (*k*).

2. I BEQUEATH all the residue of my personal estate and effects [*or, as in preceding form*] unto my son, [*name*], absolutely.

Personalty to several in equal shares.

3. I BEQUEATH all the residue of my personal estate and effects unto and between [*legatee*], of, &c., and [*legatee*] in equal shares absolutely.

(*h*) As to succession duty, see Succession Duty Act, 1853, s. 42, and Finance, &c. Act, 1910, s. 56 (1); and as to estate duty, see Finance Act, 1894, s. 9 (1); Finance Act, 1910, s. 54; and Finance Act, 1919, s. 29. See also as to death duties, Finance Act, 1914, ss. 12 to 16; and Finance Act, 1919, s. 30.

(*i*) A gift of residuary real and personal estate with a direction for payment of debts or legacies, charges them on the realty in aid of the personalty: *Re Balls*, [1909] 1 Ch. 791.

(*k*) In case of the death of the son in the testator's lifetime leaving issue, the gift will not lapse, but will become part of the personal estate of the son: see sect. 33 of the Wills Act, 1837.

GIFTS OF RESIDUE.

Personalty to surviving children.

4. I BEQUEATH all the residue of my personal estate unto my said trustees upon trust that my trustees shall sell and convert into money the same or such parts thereof as shall be of a saleable or convertible nature, and get in the other parts thereof (with power at their discretion to postpone such sale, conversion, or getting in), and pay or divide the moneys to arise therefrom to or amongst such child and children of mine as shall survive me, and if more than one, in equal shares, to and for his, her, or their own absolute use and benefit (*l*).

Personalty to trustees, or to one or more legatees.

5*a*. I BEQUEATH all the personal estate of or to which I shall be entitled, or over which I shall have a general power of appointment or disposal by will (*m*) at my death, except property otherwise disposed of by this my will or any codicil hereto, unto the said [*trustees*], upon trust, &c. [*or*, "to [*name*], of, &c., for his absolute benefit"].

Realty and personalty to trustees, or to one or more legatees.

5*b*. I DEVISE and bequeath all the real and personal estate, whatsoever and wheresoever, of or to which I shall be seised or possessed or entitled at my death, or which I shall then have a general power to dispose of by will, except property otherwise disposed of by this my will or any codicil hereto, unto the said [*trustees*] (*n*) upon trust, &c. [*or*, "unto [*name*], of, &c., for his [*or*, her] absolute use and benefit, subject to payment, &c.," *as in note* (*n*) *below*].

(*l*) The gift being to children as a class is not within the provision of the 33rd section of the Wills Act as to lapse: *Olney* v. *Bates*, 3 Drew, 319; *Browne* v. *Hammond*, 1 Johns. 210; *Re Sir E. Harvey's Estate*, [1893] 1 Ch. 567. Generally, it is presumed the spirit of that enactment would be agreeable to the wishes of the testator, and for ordinary use the form of bequest to children, including those dying in the testator's lifetime leaving issue (*ante*, p. 501, Form 21), is to be preferred.

(*m*) See Wills Act, s. 27; *Re Jacob*, [1907] 1 Ch. 445; *Re Doherty Waterhouse*, [1918] 2 Ch. 269.

(*n*) If no other provision is made for payment of debts, &c., say, "subject to payment out of my personal estate [or, in case of deficiency thereof, out of my real estate] of my funeral and testamentary expenses and debts, and the legacies and annuities bequeathed hereby, or by any codicil hereto, and the duty on legacies or annuities bequeathed free of duty [and all estate duty payable on my real estate, including chattels real]."

GIFTS OF RESIDUE.

Same, short form.

6. I GIVE, devise and appoint (*o*) all my real and personal property not otherwise disposed of by this my will, or any codicil hereto, to the said [*trustees*], upon trust, &c. [*or*, "to [*name*], of, &c., for his own benefit"].

Residue to children and the issue of deceased children.

power to apportion among devisees;

7. I DEVISE and bequeath the residue of my real and personal estate, subject to and after payment thereout of my funeral and testamentary expenses and debts and the legacies given by this my will or any codicil hereto, to such child or children of mine living at my death, and such child or children of any my child or children then deceased, as shall survive me and attain the age of twenty-one years, in equal shares; But so that the child or children of any deceased child of mine shall take, in equal shares between them, if more than one, only the share which his, her, or their parent would have taken if living: AND I give to my trustees full discretionary power to apportion my said residuary estate among the persons entitled thereto; [and for that purpose, by any deed or deeds to convey any hereditaments, and, if they or he think fit, to sell or mortgage the same or any part thereof, or to charge any sum or sums on any parts or part thereof, for equality of partition.] [*Or*, I empower my trustees to exercise at any time or times in their discretion all such powers of appropriation in regard to my residuary estate as are conferred upon a personal representative by sect. 41 of the Administration of Estates Act, 1925 (*p*).]

appointment of trustees for management, &c., during minorities (*q*).

[AND I appoint my trustees to be the trustees and trustee for the purposes of management of lands comprised in, and for the receipt and application of income arising from, my residuary real estate

(*o*) As to these words being an exercise of a special power of appointment, see *In re Barker's Settlement*, [1920] 1 Ch. 527.

(*p*) As to the conditions under which the powers of appropriation in or towards satisfaction of any legacy, or of any other interest or share, can be exercised, see the section referred to. These powers cannot be exercised by a trustee unless specially authorised by the will.

(*q*) During the infancy of any person beneficially entitled in possession to an interest in land, if the settlement or an order of the Court does not otherwise direct, trustees specially appointed by the settlement, or the settlement trustees, or trustees appointed for this purpose by the Court on the application of a guardian or a next friend of the infant, may enter into and continue in possession of the land on behalf of the infant. As to their powers, see S. L. A. 1925, s. 102.

GIFTS OF RESIDUE.

during the minorities of any persons beneficially entitled thereto, or interested therein, and for all other purposes of the 102nd section of the Settled Land Act, 1925.]

Real and personal estate to trustees.

8. I DEVISE all my messuages, lands, tenements, and hereditaments [*or*, all my real estate] of whatever tenure and wherever situate, and not otherwise devised by this my will or any codicil hereto; AND I bequeath all my personal estate and effects of every description, not otherwise bequeathed by this my will or any codicil hereto, unto my trustees upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same, that is to say, upon trust, &c. [*trusts for conversion and investment*, infra].

TRUSTS FOR CONVERSION AND INVESTMENT.

Trust for sale and conversion of residuary realty and personalty.

1. UPON TRUST that the said [*trustees*], or the [survivors or] survivor of them, or other the trustees or trustee for the time being of this my will (hereinafter called "my trustees" (*r*)) shall sell, call in, and convert into money the said real and personal estate and premises, at such time or times and in such manner as they shall think fit, but so that reversionary property shall not be sold until it falls into possession, unless my trustees shall think a prior sale expedient. [AND so that my trustees shall have full power to postpone the sale, calling in, and conversion of the whole or any part or parts of the said property, including leaseholds or other property of a terminable, hazardous (*t*), or wasting nature

Power to postpone sale and conversion (*s*).

(*r*) If the appointment of executors and trustees contains an interpretation clause (see *ante*, p. 462, Form 3), or if this interpretation clause has been already inserted in an earlier part of the will, say here merely, "upon trust that my trustees."

(*s*) The power to postpone is for a reasonable time only: *Re Marshall*, [1914] 1 Ch. 192; 83 L. J. Ch. 307. The discretion given to the trustees by this power must be exercised consciously (see *Rowlls* v. *Bebb*, [1900] 2 Ch. 107) and by all the trustees: *Re Hilton*, [1909] 2 Ch. 548; see Key & Elph. 10th ed. vol. 2, p. 872, notes; and with due regard to the interests of the estate generally, *Re Charteris*, [1917] 2 Ch. 379.

(*t*) See *Re Bates*, [1907] 1 Ch. 22.

for such period as they may think fit, and to retain investments existing at my death without being liable for loss (*u*).] CONVERSION AND INVESTMENT.

2. THE INCOME of the unsold portions of the said real and personal estate shall from my death be applied in like manner as if the same were income of the investment hereinafter directed of the proceeds of sale thereof; AND no reversionary or other property not actually producing income shall be treated as income bearing for the purposes of my will (*x*). Application of income of unconverted property.

3. MY TRUSTEES shall out of the net proceeds of such sale, calling in, and conversion, and any moneys in their hands forming Trusts of proceeds of sale, &c. (*y*).

(*u*) If the power to postpone conversion given in Form 9, *post*, p. 549, is used, the words in brackets will be omitted.

(*x*) See *Re Hubbuck*, [1896] 1 Ch. 754; and *Re Lewis*, [1907] 2 Ch. 296. As to the application of the income of unconverted property, as between tenant for life and remaindermen, in the absence of express directions, see notes on *Howe* v. *Lord Dartmouth*, Wh. & T. L. C.; *Re Wareham*, [1912] 2 Ch. 312; *Macdonald* v. *Irvine*, 8 Ch. D. 101; *Re Inman*, [1915] 1 Ch. 187; *Re Beech*, [1920] 1 Ch. 40; Gover on Capital and Income, 2nd ed. 1377 *et seq.*; but see now in *Re Brooker*, [1926] W. N. p. 93, which appears to overrule the principle of *Howe* v. *Earl of Dartmouth*. As to the effect of the provision in the text, see *Rowlls* v. *Bebb*, *sup.*; *Re Chancellor*, 26 Ch. D. 42; *Re Charteris*, *sup.*; *Re Crowther*, [1895] 2 Ch. 56; *Re Thomas*, [1914] 2 Ch. 110.

(*y*) An absolute trust for sale effects a conversion, notwithstanding a discretion as to the time of sale: *Re Raw*, 26 Ch. D. 601; *Re Heathcote* (1887), W. N. 217; but see, as to a discretionary trust for sale, *Re Hotchkys*, 32 Ch. D. 408. The equitable doctrine of conversion does not affect the rights of the Crown: *Talbot* v. *Jevers*, [1917] 2 Ch. 263. As to conversion.

By sect. 23 of the L. P. A. 1925, a trust for sale, so far as regards the protection of any purchaser thereunder, is to be deemed to be subsisting until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale. As to the duration of powers of sale, see *Lantsbery* v. *Collier*, 2 K. & J. 709; *Peters* v. *Lewes, &c. Rly. Co.*, 18 Ch. D. 429; *Re Lord Sudeley and Baines*, [1894] 1 Ch. 334; *Re Dyson and Fowke*, [1896] 2 Ch. 720; *Re Jump*, [1903] 1 Ch. 129; *Re Kaye and Hoyle*, 53 Sol. J. 520. Duration of trusts for sale. Duration of powers of sale.

If land is directed to be converted, but there is no one who has any right or equity to enforce the trust, there is no conversion, but the land devolves as land: see *Re Lord Grimthorpe*, [1908] 2 Ch. 675; *Re Ffennell's Settlement*, [1918] 1 Ch. 91; *Re O'Grady's S.*, [1916]

CONVERSION AND INVESTMENT.

part of my said real and personal estate, pay my funeral and testamentary expenses and debts and the pecuniary legacies bequeathed hereby, or by any codicil hereto, and the death duties on such of them as are bequeathed free of such duties.

Power to appropriate part of purchase-moneys for indemnity of purchaser.

4. And I direct that (without prejudice to any statutory or other powers of trustees incident to a sale by them of trust property) my trustees may consent that all or any part of the moneys to arise from any such sale or sales as aforesaid, shall be appropriated and set apart in the names or name either of my trustees or of any other persons or person to be appointed for that purpose, for a given time, or till a given event, to be limited in that behalf, as an indemnity to the purchaser or purchasers of the said hereditaments respectively, in such manner and upon such trusts as my trustees shall, in their discretion, think fit.

Power for trustee to purchase any part of trust estate.

5. I declare that my trustees, or any of them, shall be competent to purchase any part of my trust estate, either at any public auction or from a co-trustee or co-trustees by private contract, any rule of equity to the contrary notwithstanding.

Trust for investment of legacy or share of residue.

6. My trustees shall invest the legacy [*or*, "share of my residuary estate"] hereinbefore given to or in trust for the said [*legatee*], with his consent [in writing], if of full age, in their names [or under their legal control], in or upon any of the investments hereby authorised.

Trust for investment of infants' legacies or shares of residue.

7. My trustees shall invest every legacy [*or*, "share of my residuary estate"] which shall not be absolutely vested in possession and immediately payable or transferable [with the consent

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2 A. C. 231. Where there is only a power of sale, no conversion takes place till the power is exercised: *Re Dyson*, [1910] 1 Ch. 750. Where land was conveyed to trustees upon trust to sell upon the request of three settlors, one of whom died intestate having made no request in his lifetime, it was held that the land remaining unsold retained its character of real estate. Where the trust for conversion and the power to postpone were both subject to the consent of the tenant for life, it was held that she was entitled to the income in specie: *Re Rogers*, [1915] 2 Ch. 437.

As to what are testamentary expenses, see *O'Grady* v. *Wilmot*, [1916] 2 A. C. 231.

in writing of any person of full age for the time being entitled to the income thereof, and if there be no such person] at their discretion, in their names, &c. [*as in last form*]. CONVERSION AND INVESTMENT.

8. PROVIDED ALWAYS, that no sale shall be made of any part of my freehold or leasehold estates, or of my farming stock, farming utensils, or crops, in the lifetime of any adult son or sons of mine, until my trustees, or one of them, shall, by writing under their or his hands or hand, have offered to such son, or to such sons successively (according to priority of birth), the option of purchasing the same or any part thereof, at a valuation to be made by a valuer appointed by my trustees (such valuation to be made, at the option of my trustees, either before or after the making of such offer to my said son or sons), nor until such son or each of such sons shall have neglected to notify by writing under his hand to my trustees, within fourteen days from the making of such offer, his acceptance thereof; but so that my trustees may, in their discretion, extend the period hereby allowed for notifying any such acceptance if they or he shall think fit: AND I direct that if any such son shall notify his acceptance of the said offer within such period as aforesaid, then, on payment of the amount of the said valuation, my trustees shall assure the said hereditaments and premises to the son purchasing the same or as he shall direct: PROVIDED ALWAYS, that no purchaser from my said trustees shall, nor shall any purchaser from or other person dealing with any such son after the said premises shall have been so assured as aforesaid, be affected or concerned to take notice of the powers of pre-emption hereby given to such son, or to inquire as to whether or not any of the provisions herein contained with regard to such pre-emption have been complied with or duly observed. Property to be offered to son or sons before sale, at a valuation (*z*). Protection of purchasers.

9. MY TRUSTEES [shall not sell or convert any reversionary or other property not yielding income unless and until they shall think such sale or conversion would be to the advantage of my residuary estate, and of the persons or person for the time being beneficially entitled thereto or interested therein; AND] may, in their absolute and uncontrolled discretion, postpone the sale, call- Power to postpone sale and conversion (*a*).

(*z*) As to rights of pre-emption, see sect. 186 of the L. P. A. 1925.

(*a*) See notes on pp. 546, 547, *ante*.

CONVERSION AND INVESTMENT.

ing in, or conversion of my residuary [real and] personal estate, or any part thereof [including leaseholds and other property of a terminable or wasting nature], for such time as they shall think fit, without being answerable for loss; AND I declare that, until sale or conversion, the [rents, profits, and] income arising from such part of my residuary [real and] personal estate as shall for the time being remain unsold or unconverted, shall be paid or applied by my trustees, upon the trusts, to the persons or person for the purposes, and in manner, to whom, and for and in which the dividends, interest, and income arising from the investment of the proceeds of sale of my residuary, real, and personal estate would have been payable or applicable under the trusts hereinafter declared concerning the same.

Destination of income till sale or conversion.

Power to executors to continue loan to testator's son;

10. AND WHEREAS my son, [*name*], is indebted to me in the sum of £——, for which I hold his bond, dated the —— day of ——, 19—, now, I hereby authorise and empower my trustees, in their discretion, to postpone the calling in of such bond debt or any other debt which may be owing to me from the said [*son*] at the time of my death, for such period as my trustees shall think proper.

Leaseholds, &c. to be considered as sold.

11. As to such portion of my estate the sale or conversion of which shall be postponed under the power in that behalf hereinbefore contained as shall at any time consist of leaseholds, reversions, or other property either of a perishable or increasing value, the person or persons who would have been entitled to the income arising from the proceeds thereof, if sold, shall be entitled only to interest on the actual value thereof as if the same were sold, and not to the annual produce thereof; such value to be estimated by my trustees, in their absolute discretion, with power for them from time to time to vary such estimate; and such interest to be paid half-yearly, at the rate of 4 per cent. per annum, and to commence and be computed from the day of my death.

Whole of income of leaseholds and property of a wasting nature to be applicable

12. I DECLARE that all rents, profits, or income arising from or receivable in respect of any leaseholds, or other property of a terminable or wasting nature, whether real or personal, and which may for the time being form part of my residuary estate and be vested in possession, shall, for all purposes of this my will and as

between all persons interested hereunder, be applicable as from the day of my death as income under the trusts of this my will, no part thereof being in any event liable to be retained as capital.

CONVERSION AND INVESTMENT.

for benefit of tenant for life (*b*).

13. My TRUSTEES shall, [with the consent of my said wife during her life [*or*, widowhood], and afterwards], at their discretion, invest the residue of the moneys to arise from the sale, calling in, and conversion of, or forming part of, my residuary [real and] personal estate in their names, [or under their legal control (*c*)], in or upon any of the stocks, funds, [shares], and securities hereinafter authorised for investment of trust moneys hereunder. AND may from time to time with such consent, or at such discretion as aforesaid, vary and transpose all or any of such investments into or for others of a nature hereby authorised.

Trust for investment of residue.

Power to vary investments.

14. I DECLARE that my trustees shall stand possessed of and interested in the said residuary moneys, and the investments of which the same shall consist, or in or upon which the same shall from time to time be invested (hereinafter called the "[residuary (*d*)] trust fund"), and the annual produce and income thereof, upon the trusts, for the purposes, and with and subject to the powers and provisions hereinafter expressed concerning the same, (that is to say), [*ulterior trusts*].

Trustees to stand possessed of investments upon trust, &c.

15. My TRUSTEES may, in their absolute discretion, at any time or times invest any moneys in their hands forming part of my residuary real and personal estate, or arising from the sale or disposition thereof, or of any part thereof, in the pur-

Power to trustees to invest trust-moneys in the purchase of freeholds or leaseholds (*e*).

(*b*) See *Howe* v. *Lord Dartmouth*, 7 Ves. 137; Wh. & Tud. L. C. Eq.; and *ante*, p. 547, note (*x*).

(*c*) These words in brackets should be inserted where it is intended to authorise investment in securities passing by delivery, such as many foreign government securities which are incapable of being registered.

(*d*) Where there are several funds settled by the will, it may be convenient to distinguish them as "the first [secondly, &c.] mentioned settled legacy fund," "the residuary trust fund," or otherwise.

(*e*) For powers to purchase a residence for wife and daughters, see *post*, p. 589, Form 28.

CONVERSION AND INVESTMENT.

to purchase, subject to special conditions, &c.;

trustees to hold purchased lands upon trusts before declared;

purchased lands to be treated as personalty;

trustee's indemnity.

chase of any freehold or leasehold messuages, lands, tenements, or hereditaments, in England and Wales (so that the leaseholds be held for an absolute term, of which not less than [*sixty*] years shall be then unexpired), with power to purchase, subject to any special stipulations, and to complete or accept any contract or title, though not strictly enforceable or marketable, and to waive any objections or requisitions; AND my trustees shall hold the messuages, lands, tenements, and hereditaments so to be purchased, upon the like trusts for sale and otherwise, and subject to the like powers and provisions (so far as the circumstances may allow) as if the same had originally formed part of my residuary real or leasehold property, as the case may be; AND so that the messuages, lands, tenements, and hereditaments to be so purchased as aforesaid shall, from and immediately after such purchase or purchases shall be made, be considered for all the purposes of my will as personal estate, and be transmitted accordingly, though no actual conversion thereof into money shall have taken place. PROVIDED that if any messuages, lands, tenements, or hereditaments to be purchased as aforesaid should be held by any lease or leases, my trustees shall be fully indemnified from all liability in respect of all rents, covenants, and conditions reserved by or contained in such lease or leases.

General direction as to consents to sales and investments.

16. I DECLARE that [during the lifetime of my said wife no sale, conversion, investment, or variation of investment of [any part of] my residuary [real or] personal estate [in which she shall for the time being be interested] shall be made without her previous consent in writing; AND that after the death of my said wife] no sale, conversion, investment, or variation of investment of any part of my said residuary estate, which shall have been appropriated, to answer the whole or any part of the share hereinafter given to my trustees in trust for any of my children and his or her issue, shall be made during the life of the child entitled to the income of such share, if of full age, without his or her previous consent in writing.

Power for trustees to make advances to son out of trust funds.

17. MY TRUSTEES may, in their discretion, advance and lend to my son, [*name*] for the purposes of his business, any sum or sums not exceeding in the whole £——, out of the said trust funds,

at such rate of interest, for such period, and on such personal or other security, as they shall think fit (*f*). CONVERSION AND INVESTMENT.

GENERAL POWERS OF APPOINTMENT OVER PERSONALTY.

1. UPON TRUST for such person or persons, for such purposes, and in such manner, as the said [*donee of power*] shall, at any time or times [during coverture by will or codicil, or while not under any coverture], by any deed or deeds revocable or irrevocable, or by will or codicil appoint: AND in default of, and subject to any such appointment, in trust, &c. To one by deed or will, with variation for female donee.

2. UPON TRUST for such persons or person, for such purposes, and in such manner, as the said [*donees of power*] shall, at any time or times, by any deed or deeds, revocable or irrevocable, jointly appoint: AND in default of, and subject to any such joint appointment, then as the survivor of them the said [*donees*] shall, after the death of such one of them as shall first die, at any time or times, by any deed or deeds, revocable or irrevocable, or by will or codicil appoint: AND in default of, and subject to any appointment made under either of the powers hereinbefore contained, in trust, &c. To two and the survivor.

(*f*) If the son is a trustee, add the following proviso:—

"PROVIDED ALWAYS that my trustees, other than my said son, [*name*], may call in and compel payment of the said sum or sums of money when the same shall become payable, but without being answerable for any loss arising from any omission so to do or delay in so doing."

TRUSTS OF RESIDUARY PERSONALTY.

TRUSTS OF RESIDUARY FUNDS OF PERSONALTY (*g*).

Income to wife during her widowhood (*h*).

Request as to maintenance, &c. of children (*i*).

After her death or re-marriage.

1*a*. Upon trust, that my trustees shall pay the income of the said [residuary] trust fund to my said wife during her life [widowhood]: [And I request my said wife, out of such income, to maintain and educate such of my sons as shall, for the time being, be under the age of twenty-one years, and such of my daughters as shall, for the time being, be under that age, not having been married, in a manner suitable to their station in life; but such request shall not impose any legal obligation on my said wife and she shall not be liable to account for, or in respect of any income so paid to or received by her:] And (*k*) from and

(*g*) These forms can easily be adapted to the case of settled legacies, or of real or personal estate where conversion is not directed.

(*h*) Gifts *till marriage* are valid: *Heath* v. *Lewis*, 3 De G. M. & G. 954; see *Evans* v. *Rosser*, 2 H. & M. 190.

Conditions in restraint of marriage.

Conditions *subsequent* in restraint of marriage are generally void, on grounds of public policy, if attached to a gift of personalty (*Morley* v. *Rennoldson*, 2 Hare, 570), or to a gift out of a mixed fund (*Bellairs* v. *Bellairs*, L. R. 18 Eq. 510); but, apparently, not so in the case of a gift of realty: *Jones* v. *Jones*, 1 Q. B. D. 279. But such a condition may be imposed upon a widow (*Lloyd* v. *Lloyd*, 2 Sim. N. S. 263; *Newton* v. *Marsden*, 2 J. & H. 356), or upon a widower: *Allen* v. *Jackson*, 1 Ch. D. 399. As to conditions in restraint of marriage, see Theobald on Wills, 7th ed. pp. 624 *et seq.*; and see *Re Hewett*, [1918] 1 Ch. 458; *Re Lovell*, [1920] 1 Ch. 122 (bequest to married woman living apart from her husband).

(*i*) As to what words are sufficient to create a precatory trust, see *Re Hamilton*, [1895] 2 Ch. 370; *Re Williams*, [1897] 2 Ch. 12; *Re Oldfield*, [1904] 1 Ch. 549; *Comiskey* v. *Bowring-Hanbury*, [1905] A. C. 84; *Re Burley*, [1910] 1 Ch. 215; and *Re Conolly*, *ibid.* 219; Theobald, pp. 488 *et seq.*

(*k*) The following clause may be here inserted, if desired:—

Substitution of annuity for life interest in case of marriage.

"And if my said wife shall marry again my trustees shall out of the income of the trust fund pay to her during her life, without power of anticipation, an annuity of £——, by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months after such future marriage, and shall pay and apply the residue of such income as if my said wife were actually dead: And from and after the death of my said wife, shall stand, &c."

after her death, or future marriage, my trustees shall stand possessed of, and interested in the capital and income of the said trust fund,— TRUSTS OF RESIDUARY PERSONALTY.

1*b*. IN TRUST for all or such one or more exclusively of the others or other of my children [or more remote issue, such issue to be born and take vested interests in the lifetime of my said wife, or within twenty-one years afterwards], at such age or time, or respective ages or times, and, if more than one, in such shares and proportions, and with and subject to such executory trusts, conditions, and limitations over (such trusts, conditions, and limitations over being for the benefit of some or one of my said children, or of the issue of such deceased child or children), and with such powers of advancement, either in the lifetime of my said wife or after her death, maintenance and education, at the discretion of my trustees, or of any other persons or person, and generally in such manner as my said wife [during widowhood] shall, by deed revocable or irrevocable, or by will or codicil appoint: [PROVIDED nevertheless, that, if my said wife shall marry after my death, the power of appointment lastly hereinbefore reserved to her, shall, from and after such her marriage, cease and determine, but without prejudice to any previous appointment by deed made in exercise of such power:] AND in default of, and subject to any such appointment,— Trust for children and remote issue as wife shall appoint (*l*). Cesser of power on re-marriage.

(*l*) Where children take vested interests in a reversionary fund, of which the income is given to their parent for life, it is often expedient to reserve to the latter a power of varying the shares, as well for the purpose of securing to the donee parental influence as of enabling him to adjust the disposition to the exigencies of the respective objects, and introducing such modifications as circumstances may require; and it has another advantage, not often considered, that it checks the children in the disposal of their reversionary interests; for a vested share which is liable to be cut down or wholly defeated by an appointment, of course, is not a marketable commodity. As to giving to parents a power of selection.

As a precaution against an invalid appointment, it is useful to restrict the issue so as not to fall within the mischief of the rule against perpetuities. But a general power to a person *in esse* to appoint to issue without expressing at what time they are to be born is good, inasmuch as the power may be exercised so as not to infringe the rule: see Elph. Introd.; and see *Re De Sommery*, [1912] 2 Ch. 622.

TRUSTS OF RESIDUARY PERSONALTY.

Trust for children equally (*m*).

1*c*. In trust for all or any my children or child, who, being sons or a son, shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry under that age, and if more than one in equal shares as tenants in common.

Hotchpot clause.

1*d*. Provided always, that no child who [or whose issue] shall take any share, or shares, or interest in the trust fund, by virtue of any appointment or appointments, under the power hereinbefore contained, shall, in the absence of an express declaration to the contrary in any such appointment, take any share in the unappointed part of the said trust fund, without bringing such appointed share or shares, or interest, into hotchpot, and accounting for the same accordingly.

Ultimate trust in default of children.

1*e*. Subject to the trusts aforesaid and to the powers hereby or by law vested in my trustees, and to every or any exercise of such powers, my trustees shall hold the said trust fund and the income thereof In trust for, &c.

Trust for wife for life, without power of anticipation;

2*a*. Upon trust, to pay the income of the said trust fund to my said wife during her life, but without power of anticipation: And from and after her death as to as well the capital as the income of the said trust fund,—

for testator's children and issue as wife shall appoint (short form);

2*b*. In trust for such one or more of my children or more remote issue (such more remote issue to be born in the lifetime of my said wife), in such shares, if more than one, subject to such provisoes and restrictions, and in such manner in all respects as she my said wife shall, by deed or will, or codicil, appoint: And

in default of appointment;

in default of, and subject to any such appointment,—

for children and issue living at wife's death, *per stirpes*.

2*c*. In trust for all and every the children and child of mine who shall survive me and be living at the death of my said wife, and who shall attain the age of twenty-one years or marry, if more than one, in equal shares: And also the issue then living, and who shall attain the age of twenty-one years or marry, of any children or child of mine who shall have died in the lifetime of my said wife (whether in my lifetime or after my death), such issue, through all the degrees, to take *per stirpes*, and if more than one, in equal shares, as between themselves, such share or

(*m*) As to undivided shares of chattels, see sect. 188 of the L. P. A. 1925.

respective shares only as his or their parent or respective parents would have been entitled to if living, absolutely. TRUSTS OF RESIDUARY PERSONALTY.

2*d*. PROVIDED ALWAYS, that no child, or other issue (*n*), who or whose issue, &c. [*continue as in Form* 1*d*]. Hotchpot clause.

3*a*. UPON TRUST, to pay the income of the said trust fund to my said wife during her life, but so that she shall not have power to anticipate the same during coverture; subject nevertheless to the obligation of my said wife, suitably and adequately to maintain and educate all and every my children and child, until they, he, or she shall attain the age of twenty-one years or marry under that age respectively, in such manner as she shall in her discretion think proper; AND from and after the death of my said wife, as to as well the capital as the income of the trust fund,— Trust for wife for life, to be applied for maintenance of herself and children; after the death of wife.

3*b*. IN TRUST for all or any my children or child who shall be living at the time of my death, and who, being sons or a son, shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry under that age, if more than one, in equal shares; subject, nevertheless, as to the shares of such of my children as shall be daughters, to the trusts hereinafter declared concerning the same. Trust for children, sons at twenty-one, daughters at twenty-one or marriage;

3*c*. MY TRUSTEES shall stand possessed of and interested in the share of the trust fund to which such daughter or each of such daughters shall become entitled, and the investments (*o*) representing the same (hereinafter called "the settled share"), upon the trusts following, namely:— settlement of the shares of daughters; investment;

3*d*. UPON TRUST, to pay the income of the settled share to such daughter during her life, but without power of anticipation, while under any coverture; AND from and after the death of such daughter, shall stand possessed of and interested in the capital and the future income of the settled share,— inalienable life interest;

3*e*. IN TRUST for all or such one or more of the children or remoter issue of such daughter (such remoter issue being born in children and other issue of daughter, as

(*n*) These words are necessary where the trusts in default of appointment extend to remoter issue.

(*o*) It is assumed that the will contains a general direction as to investments.

TRUSTS OF RESIDUARY PERSONALTY.

her lifetime or within twenty-one years after her death), in such proportions, for such interests, and generally in such manner as she shall by deed, revocable or irrevocable, or by will or codicil, appoint: AND in default of, and subject to any such appointment,

she shall appoint;

in default to children equally:

3*f*. IN TRUST for all and every the children and child of such daughter, who, either before or after her death, shall, being sons or a son, attain the age of twenty-one years, or, being daughters or a daughter, attain that age or marry, if more than one, in equal shares [*Hotchpot clause*, ante, *p.* 556, *Form* 1*d*, *substituting* "settled share" *for* "trust fund"]; but if no child of such daughter of mine shall live to acquire a vested interest in such daughter's share, then,—

as daughter shall appoint;

3*g*. IN TRUST for such persons, for such interests, and generally in such manner in all respects as such daughter shall, while not under any coverture, by deed revocable or irrevocable, or, whether covert or sole, by will appoint; AND in default of, and subject to any such appointment, in trust for the person or persons who, at the death of such daughter, under the Administration of Estates Act, 1925, would be entitled to her personal estate if she had died a spinster and intestate, such persons, if more than one, to take in the proportions prescribed by the said Act.

daughter empowered to appoint a life interest to a husband.

3*h*. AND I empower such daughter, notwithstanding the trusts herein contained by deed, executed either after or in contemplation of her marriage, or by will or codicil, to appoint the whole or any part [*or*, any part not exceeding one moiety] of the annual income, to accrue due after her death, of the settled share, unto or for the benefit of any husband of such daughter who shall survive her, during the remainder of his life or for any less period, and subject to such provisions and restrictions as she shall think fit.

Income of one moiety to wife during widowhood.

4*a*. UPON TRUST, as to one moiety of the said trust fund, to pay the income thereof unto my said wife, or permit her to receive the same during her widowhood (*p*).

As to provisions for widow.

(*p*) This form, and two others which have preceded it, exhibit much variety in the mode of providing for the testator's widow. In Form 1, the widow takes the entire income for her own use during her widowhood; in Form 3, she takes the income for life, charged with the maintenance of the testator's children; and in the present instance, the widow takes an immediate life interest in a moiety during widowhood, the other moiety

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4b. And as to as well the said moiety of the said trust fund (subject as aforesaid), as also the other moiety thereof, immediately after my death, in trust to pay or divide the same to or among all and every my children and child who shall survive me, and, being sons or a son, shall attain the age of twenty-five years, or, being daughters or a daughter, shall attain the age of twenty-one years or marry under that age, with my consent if marrying in my lifetime, or with the consent of her or their guardians for the time being (if any) if marrying after my decease, for the absolute benefit of such children respectively, in such shares and proportions that the share of each son of mine shall be double the share of each daughter of mine; And as to daughters' shares, subject to the trusts hereinafter declared of the same.

Trust for children, sons at twenty-five, daughters at twenty-one or marriage, sons' shares being double those of daughters.

4c. My trustees shall stand possessed of and interested in the said trust fund, or the share thereof to which any daughter of mine shall become entitled as aforesaid (subject, nevertheless, to the trust concerning the income of one moiety of the trust fund in favour of my said wife during her widowhood as aforesaid), upon the trusts hereinafter expressed (that is to say), whether such daughter shall marry before attaining the age of twenty-one years, or shall attain such age without having married, upon trust to continue the investments for the time being thereof, or from time to time to vary such investments in, to, or for others of a nature hereby authorised as shall be deemed expedient; And

Settlement of shares of daughters (*q*).

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being given to the children, on failure of whom before the vesting age the widow also takes an interest for life (not during widowhood merely) in this moiety. In this form, the children to take under the gift are those who survive the testator; but where a testator gave property to trustees upon trust to pay the income to his wife during widowhood, and after her death or remarriage "on trust for all or any my children or child living at the decease of the survivor of myself and my said wife and the children then living of any deceased child of mine," it was held that the testator's children living at the date of the widow's remarriage took vested interests to the exclusion of all grandchildren: *Re Warner,* [1918] 1 Ch. 368.

(*q*) Where there is an absolute gift of property or a share of property, followed by a settlement of such property or share, and the trusts of the settlement fail wholly or partially, to that extent the absolute gift remains: see *Hancock* v. *Watson,* [1902] A. C. 14; *In re Harrison,* [1918] 2 Ch. 59; *Re Currie,* [1910] 1 Ch. 329; *In re Cannell's Settlement,* [1915] 1 Ch. 867; *Re Cohen,* [1915] W. N. 361.

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shall hold the said trust fund, or the share therein of such daughter, and the investments representing the same (hereinafter called "the settled fund"), and the income thereof, upon the trusts following (that is to say),—

Trusts for each daughter during her life.

4*d*. UPON TRUST, to pay the income of the settled fund to such daughter during her life; AND from and after her death shall hold the capital and future income of the settled fund.

Trust for her children equally. Accruer clause.

4*e*. IN TRUST (*r*), for all and every the children or child of such daughter absolutely, if more than one, in equal shares; AND if any one or more of the said children, being a son or sons, should die under the age of twenty-one years, or, being a daughter or daughters, should die under that age without having been married, then as to as well the original share or shares of the settled fund, belonging to the child or children respectively who shall so die as aforesaid, as also the share or shares thereof to which the same child or children respectively may become entitled under this present trust, in trust for the other or others of the said children absolutely, if more than one, in equal shares, or if there should be originally only one child of such daughter as aforesaid (*s*), then in trust for such only child, absolutely.

In default of children of daughter, then upon the trusts declared of the remaining shares.

4*f*. IF THERE should be no child of such daughter of mine, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then, as to the part of the fund, constituting the share or shares, as well original as accruing under this present proviso, of such daughter as aforesaid, my trustees shall stand possessed thereof, upon the trusts and for the purposes by this my will declared concerning the other or remaining shares of the trust fund, for the benefit of my other children respectively, or such their issue as aforesaid, so far as the same trusts and purposes shall then be subsisting and

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(*r*) Here, it will be observed, the daughters have no power of selection (as in Form 3*g*). Such a power has a salutary tendency in increasing parental influence, and enabling the donee to adapt her disposition of the property to the circumstances existing at the time of its exercise.

As to limitations of personalty, with clauses of accruer.

(*s*) This form exemplifies what does not occur in any previous one, namely, a gift to the children as they come into existence of immediate vested interests, with a clause of accruer causing their interests to be divested on their dying before the age of distribution; the more usual and better course is to suspend the vesting until the latter period.

capable of taking effect. AND in case none of the trusts declared by this my will concerning the other or remaining shares in favour of my other children or their issue should be then subsisting, or in case such trusts should afterwards fail, then the share or shares of such my daughter respectively who shall die without leaving any child who shall acquire an absolutely vested interest as aforesaid, shall be subject to the trusts of this my will, which are subsequent to the trusts herein declared in favour of my child and children, and the issue of any deceased child or children as aforesaid (*t*). TRUSTS OF RESIDUARY PERSONALTY.

4*g*. NOTWITHSTANDING THE trusts hereinbefore contained concerning the shares of my said daughters respectively, it shall be lawful for any such daughter of mine as aforesaid, in case she should have no child who shall acquire an absolutely vested interest in the share of such daughter in the said trust fund, under the trusts hereinbefore contained, by will or codicil, to appoint unto or in trust for the husband of such daughter, who may happen to survive her, for his own use and benefit, the income arising from the share of such daughter in the said trust fund, for any term or period not exceeding the life of such husband (*u*). **Power to daughters to bequeath life interests to surviving husbands.**

4*h*. IF ANY of my children should die before me, or before he, she, or they shall have acquired a vested interest or vested interests in the said trust fund under the trusts aforesaid [whether before or after the date of my will] (*x*), then such child or children of each or any child of mine so dying as shall attain the age of twenty-one years, or marry under that age, shall take the share or shares, original or accruing, in the said trust fund which his, her, or their parent would have taken under the trusts aforesaid, if he, she, or they had survived me and, being a son or sons, had **Clause substituting the issue of children dying before the vesting age;**

(*t*) A power of advancement as to the shares of daughters may be here inserted, if desired. For a form of such a power, see *post*, p. 580, Form 10.

(*u*) There would, in general, be but little hesitation to give daughters a power of this nature on failure of children; in which respect the present power differs from the one in the Form 3*h*, where it is made to take precedence of the trust in favour of the children.

(*x*) The words in brackets should be inserted where a child of the testator has died leaving issue at the date of the will: *In re Brown*, [1917] 2 Ch. 232.

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attained the age of twenty-one years, or, being a daughter or daughters, had attained that age or been married with such consent as aforesaid, and if more than one, in equal shares.

on failure of preceding trusts;

4*i*. In case no child or grandchild of mine shall acquire a vested interest in the said trust fund, under the trusts aforesaid, then subject to the trusts, powers, and provisions hereinbefore contained, and to any statutory provisions which may be applicable,

remaining moiety upon trust, for wife for life and, subject thereto, upon trusts for testator's niece and her children, by reference to trusts for testator's daughters.

my trustees shall pay the income as well of the moiety of the said trust fund, the income whereof is hereinbefore bequeathed in trust for my said wife during her widowhood, as also of the other moiety of the said trust fund, to my said wife, during her life; And after her death shall stand possessed of the entirety of the said trust fund, and the income thereof, upon such and the like trusts, and to and for such and the like intents and purposes, and with, under, and subject to such and the like powers, provisoes, and declarations, for the benefit of my niece, [*name*], and her children, or her surviving husband (being an appointee), as are hereinbefore expressed and declared concerning the share of each of my daughters in the said trust fund; And if my said niece should die without leaving any child who shall acquire a vested interest under the trust lastly hereinbefore contained, then as to the whole of the trust fund, after the death of my said niece, and after the determination of the interest of any surviving husband of her my said niece (being an appointee), in trust, &c. (*y*).

(*y*) Here add an express power of maintenance, followed, if desired, by an advancement clause. For forms of maintenance and advancement clauses, see *post*, p. 577, Form 2, and p. 579, Form 7.

Maintenance and advancement provisions are contained in the T. A. 1925, ss. 31, 32. Trustees may apply all or part of the income of trust property, being money, securities, property held on trust for sale, or proceeds of sale, and not being capital money under the S. L. A. 1925, to the maintenance, education and benefit of an infant *cestui que trust* until majority, whether or not there be other funds thereto applicable, or other persons therefor legally responsible: and after majority, if the *cestui que trust* do not thereon attain a vested interest in such income, they may pay such income to him, together with accretions under T. A. 1925, s. 31 (2), until he attains such interest or dies, or until his interest fails.

In deciding the amount of income so to be applied during minority, the trustees shall have regard to the age, requirements and circumstances of life generally, of the *cestui que trust*. If, to the knowledge of the

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5a. UPON TRUST, to pay the income of the trust fund to my son, [*name*], during his life, subject to the proviso hereinafter contained: PROVIDED ALWAYS, that if the said [*son*] should at the time of my death have alienated, charged, or disposed of, or if he shall, at any time thereafter, alienate, charge, or dispose, or attempt to alienate, charge, or dispose of the said income, or any part thereof, or if, by reason of his bankruptcy or other event happening either before or after my death (*a*), the said income shall, or, but for this present proviso, would become wholly or in part vested in or charged in favour of some other person or persons, then the trust hereinbefore expressed concerning the said income shall immediately thereupon cease or determine, and my trustees shall, during the residue of the life of the said [*son*], or during such shorter period, continuous or discontinuous, as they shall in their absolute discretion think fit, pay and apply the said income, or any part thereof, to and for the personal support and maintenance, or otherwise, for the benefit of the said [*son* (*b*)] or the wife, child, or children, or remoter issue, for the time being, if

Trust for son for life.

Proviso for cesser of life interest on alienation (*z*).

Discretionary trusts of income after alienation.

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trustees, the income of several funds is so applicable, then, in default of (i) an order of the Court to the contrary, or (ii) such application of the entire income of all the funds, the income of each fund is to be applied proportionately.

For the advancement or benefit of a *cestui que trust,* the trustees may pay or apply capital money under the following conditions:—Money so applied is not to be more than half the presumptive or vested share or interest in the trust property of the *cestui que trust* for whom it is applied: the *cestui que trust,* on acquiring an absolute or indefeasible title to such share or interest, must bring into account the money so paid or applied; and, lastly, money may not be thus applied so as to prejudice any prior interest, unless the person entitled for such interest be of full age and give written consent to such application.

(*z*) For other forms of trusts for life determinable on bankruptcy, &c., see *ante,* Form 6, p. 521, and *post,* Form 6*a*, p. 565. The Apportionment Act, 1870, does not apply to income accrued but not actually payable under this clause at the time of cesser of the life interest: see *Re Jenkins,* [1915] 1 Ch. 46.

(*a*) If there is a power of advancement with the consent of the tenant for life, say,

"not being merely a consent to the exercise of any power of advancement herein contained."

(*b*) See *ante,* p. 529, note (*l*).

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any, whether infants or of full age, of the said [*son*], or such one or more, exclusively of the others or other of such persons, and in such manner as my trustees, in their absolute discretion, shall think fit.

Trust to accumulate unapplied income for 21 years.

[5*b*. AND SUBJECT to the discretionary trust lastly hereinbefore contained, upon trust, for the period of twenty-one years after my death, to accumulate and invest the income of the trust fund, or so much thereof as shall from time to time not be paid or applied as aforesaid by my trustees in augmentation of the principal or capital of the trust fund, in the nature of compound interest:

On failure of trust,—

AND from and after the failure or determination of the trust of income hereinbefore contained in favour of the said [*son*], during his life, and after the expiration of twenty-one years after my death my trustees shall hold the capital of the trust fund, and the accumulations (if any) thereof, but subject to the discretionary trust aforesaid,—]

Income to be applied as if son were dead.

5*c*. UPON TRUST to pay and apply the income thereof, or so much as shall not from time to time be applied under the same discretionary trust to the person or persons, and in like manner as the same would be payable or applicable under the ulterior trusts concerning the same hereinafter contained, if the said [*son*] were then actually dead,—

Trusts, on death of son, for his wife and children.

5*d*. AND from and after the death of the said [*son*], my trustees shall hold the trust fund [and the accumulations, if any, thereof], and the future income of the same, upon trust to pay the income of the trust fund unto the present or any future wife of the said [*son*], who may happen to survive him, during the life of such wife, without power of anticipation; AND, after her death, upon trust to transfer the capital of the said trust fund unto or among such child or children of the said [*son*], whether born before or after the determination of his said life interest, as shall attain the age of twenty-one years or die under that age leaving issue, for his, her, or their absolute use and benefit, and if more than one, in equal shares.

Trust, in default of children of A., for B. absolutely, [*or*, trusts by reference].

5*e*. AND, in case the said [*son*] should have no child who shall acquire a vested interest in the trust fund under the trusts aforesaid, then I direct that my trustees shall stand possessed thereof, and of the income thereof, after the death of the said [*son*] and of any wife who may happen to survive him as aforesaid, upon trust for my son, [*other son*], for his absolute use and benefit, and, if

he shall die in my lifetime whether leaving issue or not, upon trust for his executors or administrators, as part of his personal estate [*or*, upon the trusts and purposes, and with, under, and subject to the powers, authorities, provisoes, and declarations herein expressed and contained of and concerning the —— part or share of my said residuary estate and the proceeds thereof herein limited in trust for my said son, [*other son*], or his children or issue].

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6*a*. UPON TRUST, to pay the income of the trust fund to my son, [*name*], unless and until he shall have done, committed, or suffered, or shall at any time or times after my death do, commit, or suffer any act, default, or thing (*c*), which would have the effect of vesting the right to receive such income, if absolutely belonging to my said son, in any other person or persons whomsoever.

Trust for or for life determinable on alienation, &c. (short form).

6*b*. AND in the event of the failure or determination during the life of my said son of the trust of income hereinbefore expressed in his favour, my trustees may, during the remainder of his life, in their absolute discretion, pay or apply the income of the trust fund, or any part thereof, to or for the personal support and maintenance or otherwise for the benefit of my said son, or his wife, or children, or remoter issue (if any) for the time being, and the persons or person interested in the trust fund under the ulterior trusts hereinafter contained, or such one or more exclusively of the others or other of such persons and in such manner as my trustees shall, in their absolute discretion, think fit: AND subject to such discretionary power, my trustees shall hold the income of the trust fund during the residue of the life of my said son upon the trusts upon which the same would for the time being be held if my said son were then actually dead: AND from and after the death of my said son, &c. [*ulterior trusts as in Form 5d*, supra].

Discretionary trust of income after alienation.

7. UPON TRUST, &c. [*ut ante, Form 6a*]: AND from and after the failure or determination during the life of my said son of the trust of income hereinbefore expressed in his favour, my trustees shall hold the trust fund and the future income thereof upon the trusts and for the purposes upon and for which the same would be applicable respectively under this my will if my said

Life interest absolutely determinable on alienation.

(*c*) See note (*a*), p. 563.

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son were then actually dead: And from and after the death of my said son, &c. [*ulterior trusts*].

Trusts for several legatees successively for their lives.

8. Upon trust, to pay the income of the trust fund to [*legatee*], of, &c., during his life: And from and after his death to pay such income to [*second legatee*], of, &c., during her life, without power of anticipation during coverture: And from and after her death, my trustees shall hold the capital and future income of the trust funds upon the trusts following, that is to say, upon trust, &c. [*or*, in trust for [*third legatee*], of, &c., absolutely].

General proviso in restraint of anticipation.

9. No female taking an interest for life [or absolute, and whether in possession, reversion, remainder, or expectancy] under the foregoing trusts shall have power to anticipate the same during any coverture (*d*).

10. All income which by this my will is directed to be held in trust for any person during his or her life shall be held on protective trusts for the benefit of that person during his or her life (*e*).

General proviso for cesser of life interests on alienation.

10*a*. If any beneficiary in whose favour any trust of income during his or her life is hereinbefore declared shall, at any time or times, alienate or charge, or affect to alienate or charge, such income, or any part thereof, or if by reason of his or her bankruptcy or any other event happening either before or after such life interest shall come into possession, or before or after my death, such income shall, or, but for this proviso, would, wholly or in part, be or become vested in or charged in favour of some other person or persons, then the trust of income hereinbefore declared in favour of such beneficiary shall thereupon cease or determine: And from and after the failure or determination of such trust of income, my trustees shall, during the residue of the life of such beneficiary, pay or apply such income to or for the benefit of the person or persons who would be entitled thereto

(*d*) As to restraints on anticipation, see *ante*, p. 502, note (*n*). The restraint cannot be made to attach to the interest of a female born after the testator's death.

(*e*) See sect. 33 of T. A. 1925.

under the ulterior trusts, if such beneficiary were dead [*or*, to or for the benefit of the wife or husband and children of such beneficiary during the remainder of his or her life, in such proportions, at such times, and in such manner as my trustees shall in their absolute discretion think fit]. TRUSTS OF RESIDUARY PERSONALTY.

11. IF ANY person who shall at my death be, or at any time thereafter shall become, entitled to any reversionary interest in the said trust fund, shall at any time before the vesting in possession of such interest, and whether before or after my death have alienated or charged such interest, or any part thereof (otherwise than by way of settlement made in contemplation of, or, with the consent of my trustees after the marriage of any person so entitled as aforesaid), or if by reason of his or her bankruptcy or any other event happening such interest, or some part thereof, should, or, but for this proviso, would on falling into possession become vested in some other person or persons, then the trusts hereinbefore declared in favour of such beneficiary shall thereupon cease, and from and after the failure or determination of such trusts, and of the trusts preceding such reversionary interest as aforesaid, my trustees shall pay or apply the capital and income of the trust fund, the trust whereof shall have so failed or determined, to or for the benefit of the person or persons who would be entitled thereto under the trusts herein declared if the person so forfeiting his or her interest had died in my lifetime [without leaving issue]. General proviso for forfeiture of reversionary interests on alienation (*f*).

12*a*. UPON TRUST to pay the income of the trust fund [*or*, the said sum of £——] among and between [A.], [B.], and [C.], and the survivors of them, in equal shares, during their joint lives and unto the survivor of them during his life. Trust to pay income of fund to three persons and the survivors and survivor.

12*b*. AND from and after the death of such survivor: Upon trust to hold the capital and income of the said trust fund, as to one equal third part thereof, for such person or persons as the General testamentary

(*f*) An executory gift over of real or personal property on alienation of an absolute *possessory* interest is void: see *Re Dugdale*, 38 Ch. D. 176, and the cases there cited; and a forfeiture clause which applied both to vested and to contingent gifts was held to be repugnant and void as to both, and not capable of being split up: *Re Smith*, [1916] 1 Ch. 369.

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power of appointment as to capital of each third part.

said [A.] shall by will or codicil appoint; AND as to one other equal third part thereof, for such person or persons as the said [B.] shall in like manner appoint; AND as to the remaining one equal third part thereof, for such person or persons as the said [C.] shall in like manner appoint; such respective parts to be paid in such shares and at such times and subject to such powers, provisoes, conditions, and restrictions,. and generally for such purposes and in such manner as the said [A.], [B.], and [C.] shall respectively, by will or codicil, appoint: AND in default of and subject to any such appointment,

Trust for survivor.

12*c*. UPON TRUST for the ultimate survivor of them, the said [A.], [B.], and [C.], absolutely.

Trust for testator's younger children at twenty-one or marriage (excluding child taking devised estates).

13. MY TRUSTEES shall stand possessed of and interested in the trust fund and the dividends, interest, and annual produce thereof, in trust for and to be equally divided between or among all or any my children or child other than my eldest or only son or daughter for the time being entitled as tenant for life to the freehold estates hereby devised who, being a son or sons, shall have attained or shall attain the age of twenty-one, or, being a daughter or daughters, shall have attained or shall attain that age, or shall have married or shall marry under that age, with the consent, if marrying after my death, of their or her guardian or guardians for the time being, and if more than one, in equal shares; AND if there shall be no child of mine other than as aforesaid, who being a son attains the age of twenty-one years, or being a daughter attains that age or marries under that age, with such consent as aforesaid, then the trust fund shall be in trust for my eldest or only son or daughter so for the time being entitled as aforesaid, and shall be a vested interest in such son on his attaining the age of twenty-one years, or in such daughter attaining that age or marrying under that age with such consent as aforesaid.

Trust for the children of testator or another person attaining twenty-one or marriage, and the children of

14. IN TRUST for such child or children of mine [*or*, of [*name*]] living at my death [*or*, at the death of the said [*name*]], and such child or children of any child or children of mine [*or*, of the said [*name*]], dying before me [*or*, before the said [*name*]], as being a male or males, shall attain the age of twenty-one years, or being a female or females shall attain that age or marry under that age,

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if more than one, in equal shares; but so that the child or children of a deceased child of mine [*or*, of the said [*name*]] shall take in equal shares, if more than one, only the share which such deceased child would have taken if he or she had survived me [*or*, the said [*name*]] and acquired a vested interest.

deceased children (*g*).

Trust for children, unequal shares (*h*).

15. UPON TRUST that my trustees shall out of the trust fund pay to my daughter [A.] the sum of £——, and to my daughter [B.] the sum of £——, and shall pay or transfer to my son [C.] the ultimate residue of the trust fund, after raising thereout and paying the said sums of £—— and £—— respectively, as aforesaid: PROVIDED ALWAYS, that my trustees may, at their discretion, in lieu of raising and paying the said sums of £—— and £—— as aforesaid, appropriate and transfer to the said [A.] and [B.], or either of them, stocks, funds, [shares], or securities forming part of the investments for the time being of the trust fund of a value equal at the time of appropriation to the sums or sum hereinbefore directed to be raised and paid to them or her, but so that the appropriation of such stocks, funds, [shares], or securities, and the mode or means in or by which their value shall be ascertained, shall not be disputed or questioned by the said [A.] or [B.], or either of them.

Power for trustees to allot investments of shares instead of paying them in cash (*i*).

(*g*) This clause may easily be adapted to the case of a trust for children, &c. living at the death of the testator and his wife; or particular children may be named, which would have the effect of excluding not only living children not named, but also children born after the date of the will. See also the forms of pecuniary bequests, pp. 495 *et seq.*, which are also applicable, with slight alteration, to gifts of residuary personalty.

(*h*) The effect of this clause is that if the residue should be insufficient to pay in full the sums given to the daughters, such gifts will abate as between themselves, without affecting the payment in full of any pecuniary legacies given in the earlier part of the will, and the son will take nothing under the gift of residue.

(*i*) As to the power of trustees and executors to appropriate personal estate to satisfy legacies or shares of residue, see *Re Beverly*, [1901] 1 Ch. 681, and the cases there mentioned; see also *Re Salaman*, [1907] 2 Ch. 46; *Re Craven*, [1914] 1 Ch. 358; *Re Wragg*, [1919] 2 Ch. 58; and see now sect. 41 of the A. E. A. 1925, which confers on personal representatives (but not on trustees) power to appropriate any part of the real or personal estate in or towards satisfaction of any legacy or other interest or share, whether settled or not.

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Trust for children unequally. Another form (*k*).

16. Upon trust to pay or transfer one equal third part or share of the trust fund to my daughter [A.], and one other equal third part or share thereof to my daughter [B.], and the remaining equal third part or share thereof to my son [C.]: Provided always, that if the amount or value of the trust fund shall at the period of distribution exceed the sum of £——, then each of my said daughters shall be entitled to and receive the sum of £——, being one equal third part or share of such sum of £——, and the residue of the said trust fund, after raising and paying thereout the sum of £—— to each of my said daughters, shall be paid or transferred to my said son for his absolute use and benefit.

Trust for children at twenty-five; substitution of the children of any child dying under twenty-five.

17. Upon trust to pay, transfer, or divide the trust fund, unto, between, or among such child or children of mine as shall survive me and attain the age of twenty-five years, and the child or children living at my death of any child or children of mine who shall be dead at my death (*l*) or shall die under the age of twenty-five years, and if more than one, in equal shares as between brothers and sisters, but so that the child or children of any child of mine dead at my death, or dying under the age of twenty-five years, shall take equally between them, if more than one, only such share as his, her, or their parent would have taken if living and attaining a vested interest.

Proviso postponing vesting of grandsons' shares to the age of twenty-five, if not too remote.

18. If any grandson or grandsons of mine attain the age of twenty-one years before the expiration of twenty-one years computed from the time of the death of the survivor of my children and more remote issue (if any) living at my death, then the vesting of the share of each such grandson in the trust fund shall be postponed to the expiration of such term of twenty-one years, or until the attainment by such respective grandson of the age of twenty-five years, which shall first happen.

(*k*) The effect of this clause is that if the residue does not exceed the amount specified, the daughters and son will take in equal shares, otherwise the surplus will go to the son.

(*l*) See *Viner* v. *Francis*, 2 Br. C. C. 658; *Lee* v. *Pain*, 4 Hare, 250; *Dimond* v. *Bostock*, L. R. 10 Ch. 358.

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19. If any child of mine [*or*, of the said [*name*]] shall have died in my lifetime, [*or*, in the lifetime of the said [*name*]] leaving issue who shall survive me [and the said [*name*]], such issue being male and attaining the age of twenty-one years, or being female and attaining that age or marrying, shall take by substitution, if more than one, in equal shares as tenants in common the share in the trust fund which such deceased child of mine [of the said [*name*]] would have taken had he or she survived me and attained a vested interest.

Clause substituting the issue of legatees in the event of their dying in the testator's lifetime.

20. If no child or remoter issue of mine shall live to acquire a vested interest in my said residuary personal estate and effects, then the whole of my said residuary personal estate and effects, or so much thereof as shall not have been applied under any of the powers herein contained, shall be in trust for my said wife, absolutely, if living and unmarried at the time of the default or failure of such children or issue, or the time of my death, which shall last happen; but if she shall be then dead or married, then in trust for my sister, [*name*], of, &c., absolutely.

Trust in default of children living to acquire a vested interest, for testator's wife if living and unmarried, and if not, then in trust for testator's sister.

21. In trust for all or any of my brothers and sisters living at my death and the children or child then living of any such brother or sister of mine as shall be then dead, who being males or a male shall attain the age of twenty-one years, or being females or a female shall attain that age or marry under that age, in equal shares as tenants in common, but so that the child or children of any deceased brother or sister shall take, if more than one, equally between them only the share which their, his, or her parent would have taken if he or she had survived me and acquired a vested interest under the trust lastly hereinbefore contained.

Trust for brothers and sisters of testator living at his death and children of deceased brothers and sisters.

22*a*. Upon trust to pay the income of the trust fund unto, between, or among such of my brothers and sisters as shall survive me, and the issue living at my death of any of my brothers and sisters who shall then be dead (other than the issue of a child or grandchild then living), during their respective lives, in equal shares as between or among children of the same parent; And so that the issue of any deceased brother or sister, or of any deceased brother's or sister's child or grandchild, shall collectively take only the share which such deceased brother or sister or brother's or

Trust for surviving brothers and sisters issue of deceased brothers and sisters for life, *per stirpes;* and then to their children or other issue at twenty-one, &c., under appointment.

TRUSTS OF RESIDUARY PERSONALTY.

sister's child or grandchild, would have taken if living; AND after the death of each such brother or sister or brother's or sister's issue, as to the share whereof the income is so given to him or her for life, upon such trusts for the benefit of any one or more of his or her issue (born in his or her lifetime), as he or she shall by deed or will appoint; AND, subject thereto, in trust for such his or her children or child as being males or a male shall attain the age of twenty-one years or leave issue, or, being females or a female, shall attain that age or marry, and if more than one, in equal shares.

Cross limitations between or among the several families.

22*b*. AND, on failure of the trusts aforesaid as to such share, upon the trusts herein declared concerning the other shares or share (including this present limitation); AND on failure of all the trusts aforesaid as to all the shares, then as to each share, upon trust for the person to whom the income thereof is hereinbefore made payable, his or her executors, administrators, and assigns, absolutely.

Hotchpot clause.

22*c*. PROVIDED ALWAYS, that no child or other issue of any of my said brothers and sisters, who or whose issue, &c. [*continue as on p.* 556, *Form* 1*d*].

Trust for brothers and sisters for their respective lives;

23*a*. UPON TRUST to pay to all and every my brothers and sisters, during his or her life, the income arising from the share of the trust fund hereinafter limited in trust for his or her child or children, so that each brother or sister of mine shall from time to time be entitled to the income from such share of the said trust fund as his or her child or children shall, or in the case of an unmarried or childless brother or sister would, if he or she had any child or children, be presumptively entitled to for the time being under the trusts and limitations hereinafter contained; AND as to each sister of mine, without power of anticipation; AND, subject to the life interests of my said [wife and] brothers and sisters respectively in the income from the whole or any share or shares of the said trust fund.

and subject thereto.

Trust for children of brothers and sisters attaining twenty-one years, &c.

23*b*. UPON TRUST to pay, transfer, or divide the said trust fund to or among such children or child of my brothers and sisters (including brothers and sisters already dead, or who shall be dead at my death), and such children or child of any nephew or niece of mine dying before me as, being males or a male, shall attain the age of twenty-one years or leave issue, or, being females or a

female, shall attain that age or marry, in equal shares as between or among the children of the same parent, and also in equal shares as between or among the different families, so that the child or the children or issue collectively of one brother or sister of mine shall take an equal share with the child or the children or issue collectively of any other brother or sister, and so that the child or the children collectively of a deceased child shall take only the share which such deceased child would have taken if living. TRUSTS OF RESIDUARY PERSONALTY.

24*a*. UPON TRUST, as to one equal moiety of the trust fund, that my trustees shall from time to time pay or apply all or any part or parts of the capital thereof and income therefrom, unto such person or persons, in such manner, upon such trusts, for the benefit of my brother, [*name*], and subject to such (if any) personal superintendence on the part of my trustees, as they shall think fit; AND, after the death of my said brother, shall dispose of the residue (if any) of such moiety of the trust fund in such manner as if the same were part of my said brother's personal estate, and he had died intestate (*m*). Trust as to a moiety of residue to apply income or capital for benefit of lunatic brother; after his death to divide any surplus among his next of kin.

24*b*. AND UPON TRUST, as to the other one equal moiety of the trust fund, that my trustees shall pay the income thereof, or permit the same to be received by my sister, [*name*], during her life, but without power of anticipation, during any coverture; AND from and after the death of my said sister: Trust as to other moiety for sister for life;

24*c*. UPON TRUST to pay the said income to the surviving husband (if any) of my said sister during his life; AND, after the death of my said sister, and of her surviving husband (if any), then as to the same moiety of the said trust fund, and the income thereof, then for sister's husband for life;

24*d*. IN TRUST for such child or children or other issue of my said sister, born during her lifetime, at such age or time, or respective ages or times, and if more than one, in such shares and proportions, and with such future or executory or other trusts for the benefit of the said issue, or some or one of them, and with such provisions for their respective maintenance, education, or advancement, at the discretion of my trustees, or of any other person or persons, and upon such conditions, with such restrictions, and in then for issue of sister, as she shall appoint;

(*m*) The concluding words of this clause will exclude any question as to the legatee's capacity, in case it should be alleged that he had left a will.

TRUSTS OF RESIDUARY PERSONALTY.

such manner as my said sister shall by deed or will appoint. AND in default of such appointment, and so far as any such appointment shall not extend:

for children of sister surviving her at twenty-one, and surviving children of deceased children;

24*e*. IN TRUST for all or any the children or child living at the death of my said sister, and the child or children then living of any then deceased child of hers who, whether children or grandchildren, being male attain the age of twenty-one years, or, being female, attain that age or marry, if more than one, in equal shares, but so that the children of any deceased child of my said sister shall take equally between them only the share which their parent would have taken had he or she survived my said sister and attained a vested interest [*Hotchpot clause*, ut ante, *p.* 556, *Form* 1*d*, mutatis mutandis].

and on failure of all the foregoing trusts, as sister shall appoint; and in default of appointment, for her absolutely;

24*f*. AND, in the event of the failure or determination of all the trusts hereinbefore contained with respect to the last-mentioned moiety of the said trust fund, and subject to the foregoing trusts, powers, and provisions, and to any statutory provisions, and to every or any exercise of such powers or provisions my trustees shall hold such moiety, and the income thereof, upon such trusts and for such purposes as my said sister shall at any time or times, while not under coverture, by deed revocable or irrevocable, or by will or codicil, or while under any coverture by will or codicil appoint; AND in default of, and subject to any such appointment, in trust for my said sister absolutely.

Trust of one share for brother for life and then for his children,

25*a*. IN TRUST, as to one ——th part thereof for my brother, [*name*], during his life; AND, after his death, in trust for such child or children of my said brother, [*name*], as shall attain the age of twenty-one years or leave issue, or, being a daughter or daughters, attain that age or marry, and such child or children of any child or children of my said brother dying before me as, being a male or males, shall attain the age of twenty-one years or leave issue, or, being a female or females, attain that age or marry, in equal shares; but so that the child or children of any deceased child of my said brother shall take only the share which such deceased child would have taken if living; AND if there should be no such child or grandchild, then upon the trusts herein declared concerning the other —— ——ths of the said trust fund; AND if all such trusts should fail of effect, then in trust for my said brother, [*name*], absolutely.

on failure of children, on the trusts of the other shares;

TRUSTS OF RESIDUARY PERSONALTY.

25*b*. And, as to another ——th part of the said trust fund, in trust for such child or children of my deceased brother, [*name*], as shall survive me and attain the age of twenty-one years or leave issue, or, being a daughter or daughters, attain that age or marry, and such child or children of any child or children of my said brother, [*name*], dead at my death, as being male survive me and attain the age of twenty-one years or leave issue, or, being female attain that age or marry, in equal shares as between or among brother and sisters; but so that the child or the children of any deceased child of my said brother shall take, equally between them, only such share as such deceased child would have taken if living; And if there should be no such child or grandchild of my said deceased brother, then upon the trusts herein declared concerning the other —— ——ths of the said trust fund.

as to another —th for children of deceased brother at twenty-one, &c.;

if no such child, over;

25*c*. And, as to each of the remaining ——th parts of the said trust fund, upon trusts in favour of each of my other brothers and sisters, [*names*], respectively, and their respective children or grandchildren, similar to the trusts above declared concerning the ——th share thereof limited in favour of my said brother, [*name*] (*n*), and his children and grandchildren, and with the like limitations over of each such share on failure of the original limitation thereof, and with the like ultimate limitation thereof on failure of such limitations over in favour of the brother or sister to whom a life interest in such share is hereinbefore given. [*Insert a general proviso in restraint of anticipation of shares of females*, ante, *p.* 566, *Form* 9.]

as to the remaining —ths for other brothers and sisters by reference.

26. Upon trust to pay one-third of the income of the trust fund to each of my three nieces, [*names*], during her life, but without power of anticipation; And, after her death, to transfer one-third of the capital thereof to such her child or children living at my death, and such child or children then living of any her child or children then dead as shall attain the age of twenty-one years or marry (if more than one, in equal shares) and his, her, or their executors, administrators, and assigns; but so that the child or the children of any deceased child shall take only the share

Trust for three nieces for life, then for their children and issue at twenty-one, &c., with cross-limitations.

(*n*) This will be the brother mentioned in Form 25*a*.

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which his, her, or their parent would have taken if living; AND if there be no such issue, then to be possessed of such third part of the last-mentioned trust premises and the income therefrom, upon the trusts herein declared concerning the other two-third parts thereof and the income therefrom; AND, if there be no such child of any of my said nieces, then to transfer the whole of the last-mentioned trust premises in such manner as the survivor of my said nieces shall by will, or, being sole, by deed appoint; AND, subject thereto, in such manner as if the same were part of her personal estate, and she had died without leaving a husband.

POWERS AND PROVISIONS RELATING TO REAL AND PERSONAL PROPERTY LIABLE TO CONVERSION.

Maintenance clause (*o*). (*general form*).

1. MY TRUSTEES may, at any time after the death of my said wife [*or*, after the determination of all prior life interests (*p*)], apply the whole, or such part as they shall think fit, of the income of the expectant or presumptive share of any child [grandchild or other issue] of mine [*or*, of the said [*name*]], under the trusts hereinbefore contained, for or towards the maintenance and education [or otherwise for the benefit] of such child [or grandchild or other issue], whether or not there is any other fund applicable to the same purpose, or any person bound by law to provide for the maintenance or education of such child [grandchild or other issue]: AND may, at their absolute discretion, either themselves so apply the same, or may pay the same to the parent or guardian or guardians of such child [grandchild or issue], for the purposes

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As to when maintenance and accumulation clauses are necessary.

(*o*) As to trustees' powers to apply income for maintenance and to accumulate surplus income during a minority, see sect. 31 of the T. A. 1925; as to power of advancement, see sect. 32 of the same Act. The wide provisions contained in the Act render it unnecessary, in most cases, to insert special clauses as to maintenance, accumulation and advancement unless it is desired to introduce some variation, and in this regard careful consideration should be given to the proviso to sub-sect. 1 of sect. 31 and to the whole of sect. 32.

(*p*) Add here, if required:—

"Subject, nevertheless, and without prejudice to the payment of the several annuities hereinbefore bequeathed."

aforesaid, without seeing to the application thereof. [*Add proviso for accumulation of surplus income*, post, *p.* 578, *clause* 5.] POWERS, &c.

2. My TRUSTEES may, after the determination or failure of every prior life or other interest or interests (if any), apply the whole, or such part as they shall think fit, of the income of any legacy or share of the said trust fund to which any person under the age prescribed for the vesting thereof (hereinafter called "a minor") shall for the time being be presumptively or expectantly or actually entitled under the trusts of this my will, or under some appointment in exercise of some power hereby given, for or towards the maintenance or education, or otherwise for the benefit of such minor, until he or she shall attain the age aforesaid [*or*, shall acquire a vested interest therein under any of the trusts, powers, and provisions hereinbefore contained]; And my trustees either may themselves so pay or apply the same, or may pay the same to the parent or guardian or guardians of such minor [*or*, to any other person or persons], for the purposes aforesaid, without seeing to the application thereof or being bound to inquire whether the maintenance of such minor is or ought to be otherwise provided for. [*Add proviso as to accumulations*, post, *p.* 578, *clause* 5.]

Proviso for maintenance of minors (*q*);

trustees may pay maintenance money to guardians.

3. My TRUSTEES may, in addition to the powers for maintenance and education by law vested in them, at their discretion, apply the whole or any part of the income or capital of the said trust fund in, for, or towards the maintenance, education, and advancement, or otherwise for the benefit of any of my said children during their respective minorities, in such manner as my trustees shall think fit (*r*); And the surplus or residue thereof unapplied to the purposes aforesaid shall, from time to time, be invested by my trustees in augmentation of the capital of the said trust fund, and shall follow the destination thereof (*s*).

Power for trustees to provide for maintenance, &c. out of capital.

(*q*) This form applies to trusts under which interests are to vest after twenty-one years of age. See now sub-sect. (1) (ii) of sect. 31 of the T. A. 1925.

(*r*) This direction relieves the trustees from the apparent restriction placed upon the exercise of their discretion by the proviso to sub-sect. (1) of sect. 31 of the T. A. 1925.

(*s*) As to the statutory power to apply accumulations of income for future maintenance, see sect. 31 (2) of the T. A. 1925.

POWERS, &c.

Maintenance of infant children as a class irrespective of their shares.

4. MY TRUSTEES may, in addition to the powers for maintenance and education by law vested in them, so long as there are two or more members of the same family who are infants, not having received any part of their respective shares by way of advancement, under the power in that behalf hereinafter contained, or in the case of daughters not having been married, and who are absolutely or contingently entitled to shares in the trust fund under the trusts hereinbefore contained, pay or apply the whole or any part of the income of the trust fund (but without prejudice to any share which has become payable to any member of such family (*t*) for or towards the common maintenance, education, or benefit of such infants, without regard to the shares in which such infants are respectively so entitled.

Proviso as to accumulation of surplus income (*u*).

5. MY TRUSTEES shall, during the suspense of absolute vesting of any such principal fund or shares as aforesaid, accumulate the residue (if any) of the income thereof by way of compound interest, by investing the same and the resulting income thereof from time to time in or upon any of the stocks, funds, shares, or secu-

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(*t*) If so desired, the following words may be substituted for the words in parentheses in the text:—

"AND for this purpose, with power to suspend payment of the capital and income of any share which has become payable to any member of such family."

But such an arrangement seems open to objection on grounds both of fairness and convenience.

(*u*) Sect. 31 (2) of the T. A. 1925, provides for the accumulation of surplus income under the power of maintenance given by the Act, and directs that such accumulations shall be held as indicated in the subsection. In the absence of express provision to the contrary, where an infant is entitled to a life interest contingent on his attaining twenty-one, the accumulations form an accretion to the capital (*Re Bowlby*, [1904] 2 Ch. 685; and see *Re Mellor; Alvarez* v. *Dodgson*, [1922] 1 Ch. 312); but where he takes a vested life interest, the accumulations belong to him: *Re Humphreys*, [1893] 3 Ch. 1; and *Re Bowlby, sup.* As to accumulations, see L. P. A. 1925, ss. 164—165: sect. 164 gives the periods for which accumulations may be directed to be made. By sect. 165, accumulations made during a minority under any statutory power are not to be included in these periods; consequently, accumulations so made shall not invalidate express trusts for accumulations during other authorised periods.

rities hereby authorised for investments, for the benefit of the person or persons who, under the trusts, powers, and provisions herein contained, shall become entitled to the principal fund or share from which the same respectively shall have proceeded; with power for my trustees to resort to the accumulation of any preceding year or years, and to apply the same for or towards the maintenance or education of the person or persons for the time being presumptively or expectantly or actually entitled to the same, in the same manner as such accumulations might have been applied in case they had been income arising from the original trust fund in the year in which the same shall be so applied. POWERS, &c.

6. PROVIDED ALWAYS, that if at the expiration of twenty-one years from my death such principal fund or shares shall not have become absolutely vested in some person or persons under the trusts hereof, then the trust for accumulation lastly hereinbefore contained shall cease to operate, and the whole of the income shall thenceforth, until the capital shall become absolutely vested as aforesaid, be paid to the person for the time being presumptively or expectantly entitled thereto. Trust for accumulation to cease after twenty-one years from testator's death.

7. MY TRUSTEES may, after the death [*or*, future marriage] of my wife [after the death of the said [*tenant for life*]], or previously thereto, with her [his] consent in writing, apply any part, not exceeding —— of the capital of the vested or contingent presumptive or expectant share or respective shares of any child [or other issue] of mine [*or*, of the said [*name*]] in the trust fund, in or towards the advancement, or otherwise for the benefit of such child [or other issue], in such manner as my trustees shall think proper, whether such child [or other issue] shall be under the age of twenty-one years or not (*y*). Power of advancement (*x*).

(*x*) Power to advance up to one-half of the presumptive or vested share in the trust property of the person for whose benefit the advancement is made is now statutory: see T. A. 1925, s. 32 (1) (a); a power of advancement, therefore, need be inserted only when it is intended that more than half such amount may be advanced.

(*y*) The power of advancement should not be confined to minority where the vesting of the legatee's interest depends on survivorship or may otherwise be deferred beyond the period of majority.

POWERS, &C.

Power to advance shares of testator's issue, where life-interests are to cease on alienation (*general form*).

8. My TRUSTEES may, at any time or times after the determination or failure of every prior life or other interest (if any), at their absolute discretion, or, previously to such determination, with the consent in writing of every or any person entitled to any such prior life or other interest (*z*), raise and apply any part or parts not exceeding in the whole one-half of the then vested, expectant, contingent, or presumptive legacy, share, or portion of any person under any of the trusts or limitations contained herein, or in any codicil hereto, for the advancement or benefit of such person, as my trustees shall think fit.

Power of advancement by majority of trustees.

9. My TRUSTEES, or the majority (if more than two), with the consent of the guardians or guardian for the time being (if any), of my said children or issue respectively, or the majority of such guardians (if more than two), or, if there should not be any guardian or guardians, and after my children shall have attained the age of twenty-one years, then, at the absolute discretion of my trustees, may advance and apply any part or parts of the respective expectant or presumptive portion or share, portions or shares, of such child or issue respectively of and in the said trust premises (not exceeding the sum of £—— for each such child or issue), for the putting or placing him or her as a clerk, apprentice, or otherwise in or to any profession, trade, or business, or otherwise for his, her, or their benefit or advancement in the world, and also to advance to such of my said children or issue as shall settle in business with the consent or approbation of my trustees, and shall have attained the age of twenty-one years, the whole or any part or parts of such expectant or presumptive portion or share, portions or shares, although such child or children or issue respectively should not, at the time or respective times of advancing or applying the same for any or either of the purposes aforesaid, have acquired a vested interest or vested interests therein.

Power of advancement out of settled shares of daughters.

10. My TRUSTEES may, during the life of any such daughter of mine as aforesaid, with her consent in writing, and after her death then in the discretion of my trustees [but without prejudice to

(*z*) See sect. 32 (1) (c) of the T. A. 1925. Notwithstanding the statutory provisions, clauses, such as the present, may be usefully inserted for the guidance of the trustees, although no longer necessary.

the aforesaid trust for the benefit of my said wife], apply any part not exceeding one-half of the principal or value of the presumptive or vested share of each or any of the children or issue of each daughter of mine as aforesaid under the trusts hereinbefore contained [or under any appointment to be made as aforesaid], in or towards the advancement or preferment in the world, or otherwise, for the benefit of the child to whom such share shall actually or presumptively belong [but no such application as last aforesaid shall be made after the death of such daughter to the prejudice of the life interest of any husband in whose favour an appointment shall have been made by her, under the power for that purpose hereinbefore contained, without his consent].

Power of advancement out of a mixed fund (*general form*).

11. My TRUSTEES may, at any time or times hereafter, raise by sale, mortgage, or otherwise, any part or parts, not exceeding in the whole [——] of the value, or estimated value (to be ascertained for that purpose in such manner as my trustees shall in their absolute and uncontrolled discretion think fit), of the then expectant or presumptive or vested legacy, portion, or share of any person, under any of the trusts, powers, or authorities herein contained, and pay or apply the same for his or her advancement or benefit as my trustees shall think fit; PROVIDED ALWAYS, that no such advancement shall be made of the capital of any trust moneys, funds, or securities whereof the income shall for the time being be payable to any person for her or his life under any of the trusts, powers, or authorities aforesaid, without her or his consent in writing (*a*).

Authority to trustees to raise £—— for advancement of son by first wife.

12. AND I AUTHORISE my trustees, other than my said wife [*second wife*], and notwithstanding her dissent (*b*), at any time or times after my death, to raise and apply not more than £—— for the advancement in life of [*name*], my son by my first wife [*name*] [AND I exclude my said wife from a voice in this matter, not from any want of confidence in her, but in order to relieve her from

(*a*) See *ante*, p. 579, note (*x*).

(*b*) If the second wife is not a trustee, say,

"I authorise my trustees, notwithstanding the dissent of my said wife [*second wife*] at any time, &c."

POWERS, &C.

any imputation to which the exercise of such a discretion could possibly subject her].

Powers for maintenance, education, and advancement, by reference to similar powers for children.

13. THE [all or any of (*c*) the] power[s] or provision[s] for [maintenance, education, and accumulation and application of surplus income during minorities, and] advancement hereinbefore contained for the benefit of my said child or children shall extend and be applicable for the benefit of all or any of the persons taking any share or interest under this my will as if the same power[s] or provision[s] were here repeated, with such alterations as the circumstances of the case may require, subject, nevertheless, and without prejudice to any trusts, powers, or provisions herein contained, to take effect in priority to the shares or interests of such persons respectively.

Appointment of trustees of will to be trustees for purposes of S. L. A. 1925, s. 102.

Incorporation by reference of the provisions of the section.

Direction as to investment of surplus income; and as to destination of accumulations.

14.—(i) MY TRUSTEES shall be trustees of this my will for the purposes of the 102nd section of the Settled Land Act, 1925, the powers and provisions whereof shall apply to the real and leasehold hereditaments and premises hereinbefore directed to be sold [AND my trustees shall enter into and continue in possession of the rents and profits thereof in every case by sect. 102 of the said Act of 1925 provided for].

(ii) Any surplus rents and profits and accumulations thereof may, during any such minority as in such last mentioned Act is provided for, be invested in any investments hereby authorised.

(iii) Without prejudice to the power of my trustees at any time to apply any accumulations of rents and profits during any such minority, as if the same were income of the current year, such accumulations shall be added to and devolve as personal estate with the said hereditaments and premises (*d*).

Power to trustees to manage and receive rents

15*a*. MY TRUSTEES may, until sale of all the freehold and leasehold messuages, lands, and premises hereinbefore devised and bequeathed in trust for sale, receive the rents and profits, and

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(*c*) Where the statutory powers for maintenance and education given by the T. A. 1925, s. 31, are relied on, all the words and letters in brackets in this form should be omitted.

(*d*) It is advisable to provide expressly how the accumulations shall devolve.

POWERS, &c. until sale of lands (*e*).

cultivate, drain, manage, and improve such premises, and open and work mines, minerals, quarries, and brickfields, and erect, pull down, and repair houses and buildings, and cut timber and underwood for repairs or sale, and insure against damage by fire, and make allowances and arrangements and settle accounts with tenants and others, and accept surrenders of leases and tenancies, and stock, work, and carry on farms in hand, and generally deal with the said premises as if they were absolute owners thereof, and pay all or any charges, either of annual or gross sums, ground or other rents, and all other outgoings, including the costs of insurance under the Workmen's Compensation Act (which they are hereby authorised to effect at their discretion), and under the National Health Insurance Act, 1924, and the Widows', Orphans' and Old Age Contributory Pensions Act, 1925, and apply all or any part of the clear surplus income arising from such hereditaments for or towards the maintenance and education during minorities [*or*, suspense in vesting], and generally for the benefit of the person or persons beneficially entitled thereto [*or*, of the said [*name*]], and to invest the remainder (if any) of such income in any of the investments hereby authorised, with power to vary such investments, and may resort to such accumulations for the maintenance or education or benefit of the person or persons for the time being actually or presumptively entitled thereto [*or*, of the said [*name*]]; AND, subject as aforesaid, I direct that such accumulations shall follow the destination of the hereditaments or premises from which the same shall arise.

Trustees may depute their powers of management to guardians.

15*b*. MY TRUSTEES may, from time to time, authorise and empower, by writing under their hands, or permit and suffer any person beneficially entitled under this my will to the rents and profits of the said trust premises, or any part thereof, if of full age, or any parent or guardian of any person so entitled who shall

(*e*) Where a testator directed the "costs of management to be paid out of rents and profits," it was held that the costs of survey and giving notice to tenants to repair was to be borne by the tenant for life: *Re Tubbs*, [1915] 1 Ch. 540; but this was reversed on appeal, [1915] 2 Ch. 137. Compare the jurisdiction of the Court, under sect. 92 of the S. L. A. 1925, to order these costs to be paid out of capital notwithstanding the will. As to costs of improvement, see *Stamford and Warrington (Earl of)*, [1916] 1 Ch. 404.

POWERS, &c. be for the time being under the age of twenty-one years, to receive such rents and profits, and to exercise all the powers of management hereinbefore given to my trustees, and in the case of and during the minority of any person so entitled as aforesaid to apply all or any part of the clear surplus income from such trust premises, towards the maintenance and education or benefit of such person; the remainder (if any) of such income to be invested in the names of my trustees, and to be applicable as aforesaid.

Power to trustees to appoint bailiffs, &c.

15*c*. My TRUSTEES may, from time to time, in their absolute discretion, appoint and employ such agents, bailiffs, stewards, receivers, clerks, accountants, or other persons to assist them in the care and management of my said real estates, and in receiving and paying the rents, income, and produce thereof, or any part thereof, or otherwise in the execution of the trusts and purposes hereinbefore declared, and dismiss any such persons as to my trustees may seem best, and may pay or allow to such persons so employed such salaries or other compensation as my trustees shall in their discretion think fit.

Power to manage (*short form*);

16*a*. While my said freehold and leasehold hereditaments, or any of them, shall remain unsold under the trust for sale hereinbefore contained, my trustees may receive the rents and profits thereof, and may, in their absolute discretion, at the cost of the said trust premises, repair, drain, improve, insure from fire (*f*), and manage the same, or such parts thereof as for the time being shall remain unsold, with all the powers in that behalf of absolute owners, including power to cut timber and underwood for sale, repair, or otherwise, and to make such allowances to and arrangements with tenants and others as they shall think just; And to accept surrenders of leases and tenancies; And with power also to adjust and determine in what proportions the expense of draining or other improvements shall be borne by the capital and income of the said trust premises respectively; And also may exercise all or any of the powers of management lastly hereinbefore contained, either in person or by salaried agents, bailiffs, or deputies.

power to delegate.

(*f*) As to the statutory power of trustees to insure, see T. A. 1925, s. 19.

POWERS, &c.

16*b*. THE RENTS and profits arising from the said freehold and leasehold hereditaments and premises, from the time of my death until the sale thereof, shall from time to time (after payment thereout of the costs of fire insurance, repairs, management, ground rents, and other outgoings), be paid and applied in the same or the like manner in all respects as the annual income arising from the moneys to be produced by the sale of such hereditaments would have been payable and applicable, by virtue of the trusts hereinbefore contained, if such sale had been made.

Application of rents until sale.

17. MY TRUSTEES may, with the consent of my said wife during her life [*or*, widowhood], and after her death [*or*, second marriage], at their discretion, demise at the best rent obtainable without fine or premium, for any term not exceeding twenty-one years in possession, any part of my freehold or leasehold hereditaments and premises, which for the time being shall remain unsold under the trust aforesaid.

Short power to lease lands for 21 years.

18. MY TRUSTEES may, from time to time, let my said freehold or leasehold hereditaments and premises, or such of them as for the time being shall not be sold under the trust for sale hereinbefore contained, or any part or parts thereof, for building, repairing, or improving purposes, for any term or terms not exceeding ninety-nine years, or for mining purposes for any term or terms not exceeding forty years, and for any consideration or considerations, either by way of fine, premium, rent, royalty, or otherwise, which they shall consider fair and adequate, or for cultivation, use, or occupation, at the best rent for the time being obtainable, without taking any premium or fine, either from year to year or for any term not exceeding twenty-one years from the time of letting, and with, under, and subject to such covenants and conditions as my trustees shall think proper.

Power to grant building and improving leases;

mining leases, and husbandry leases (*short form*).

19. MY TRUSTEES may exercise over or in respect of all or any real or leasehold hereditaments for the time being vested in them

Powers of leasing, &c. with reference to the S. L. Act (*g*).

(*g*) In the case of specifically devised estates where the S. L. A. does not apply, say,

"MY TRUSTEES may, at any time before any son or daughter of mine shall attain an absolute vested interest in possession in

POWERS, &c. as trustees of my will all such powers of [sale (*h*)], leasing and accepting surrenders of leases, and of entering into, varying, and rescinding contracts, and all powers incidental and subsidiary thereto respectively as are by the Settled Land Act, 1925, conferred on a tenant for life in possession of land.

Power to lease furnished house until sold.

20. UNTIL MY said house in —— shall be sold, my trustees may demise the same, either with or without the furniture and other articles in or upon the same, for such terms, upon such conditions, and in such manner as they shall consider to be for the benefit of the person or persons entitled to the same, under the trusts of my will; AND the rent and annual income reserved or produced thereby shall be applied in the same manner as if the same were income arising from the investment of the proceeds of the sale of the said house under the power and trusts herein contained.

Power to apportion fee farm rents, &c. on sales.

21. MY TRUSTEES may, upon any sale of a part or parts of any such hereditaments hereinbefore devised in trust for sale as are subject to a fee farm rent or perpetual rentcharge, or comprised in any lease at a yearly rent, apportion any such fee farm rent, rentcharge, or yearly rent, and make such arrangements and provisions for securing the payment by the purchaser or purchasers of the apportioned part or parts thereof, and for the performance and observance of the covenants and conditions of the grant or lease affecting the several parts of such hereditaments as aforesaid, and for giving and receiving such indemnities as may seem proper or expedient with regard to the payment of and liabilities in respect of such fee farm rents, rentcharges, and yearly rents.

Power to partition;

22. MY TRUSTEES may join in any partition of any of the hereditaments hereinbefore devised in trust for sale, and in any such partition may consent to any arrangement for the payment or receipt or securing of any money for equality of partition:

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the said hereditaments hereinbefore devised " [*or*, " during the minority of the said —— " (*as the case may be*)], " exercise over or in respect of all or any part of the said hereditaments all such powers," &c., *as in this clause*.

(*h*) Omit the word " sale " if there is a trust for sale.

power to exchange.

23. And may exchange any of such hereditaments for other freehold hereditaments in England or Wales, in fee simple or held for an absolute unexpired term of not less than ninety-nine years, to be conveyed, as nearly as may be, upon the trusts affecting the hereditaments so given in exchange immediately before such exchange.

Discretionary power to trustees to relinquish or complete contracts.

24. My trustees may either complete any contract for sale or purchase of lands or hereditaments of any tenure which may have been entered into by me and remain uncompleted at the time of my death, or may rescind or relinquish the same, as circumstances may require, and as they, in their discretion (if it should be a matter of choice), shall judge most expedient: And my trustees may accept any such title (whether strictly marketable or not) as they, in their discretion, shall deem it prudent or advisable to accept, and, if they think fit, waive or dispense with any objections, requisitions, inquiries, or evidence, which they may be strictly entitled to insist on, make, or require, or which but for this authority they would be bound to make or require; And may make any arrangements for giving or receiving compensation for misdescriptions or misstatements in the particulars or conditions of contract for any such sale or purchase, or any other matter or thing relating to the same, and give indemnities to purchasers for any defect in title, and may pay or charge the same out of or upon my estate, or any part thereof, and generally may act in relation to any such sale or purchase, as if they were beneficially interested, without being responsible for any loss caused or occasioned thereby: And I declare, that all purchase and compensation moneys payable in respect of any such purchase, and all costs of and incident to the completion, rescission, or relinquishment of any such sale or purchase, shall be paid out of, and all purchase or compensation moneys and other moneys receivable in respect of any such sale or purchase shall form part of my residuary estate, and that all lands and hereditaments so purchased shall be conveyed to and be held by my trustees upon the trusts, and with and subject to the powers and provisions hereinbefore contained of and concerning the same estate.

Authority to trustees to complete

25. And whereas I have begun to make considerable alterations and improvements in my mansion house at ——, which may

POWERS, &c.

alterations in testator's mansion-house, and generally to improve his estate.

not be completed at my death (*i*). Now in such case I hereby empower my trustees to carry on and complete the said alterations and improvements, or such part thereof as they shall think proper, out of the proceeds of my personal estate, or any other moneys which shall come to their hands by virtue of my will. AND I further empower my trustees from time to time to expend such sum or sums of money as they shall deem expedient in the repair and improvement of any of the messuages and other buildings, lands, and hereditaments hereby devised, [and also of the messuages, buildings, lands, and hereditaments to be purchased by virtue of the trusts and powers aforesaid,] and also in the erection of any new and additional messuages and other buildings on any such lands and hereditaments devised [or to be purchased] as aforesaid, and generally to make such expenditure and outlay in the improvement and amelioration of the trust estate during the continuance of the trusts hereby created, as they shall think proper and expedient (*k*).

Power to lay out streets, &c.

26. MY TRUSTEES may lay out all or any part of the hereditaments hereinbefore devised on trust for sale, for building purposes, and may appropriate and lay out any parts thereof, as they shall think fit, for streets, roads, ways, squares, gardens, or other open spaces, and may build, erect, lay down, make and execute upon, in, or under any parts of the same hereditaments, messuages, buildings, sewers, drains, gas pipes, water pipes, water courses, fences, and other works necessary to or in connection with building purposes.

Power to take and keep up a dwelling-house and

27. MY TRUSTEES may, at their discretion, apply the whole or any part of the income applicable under this my will, for the maintenance and education of my child or children, during his,

(*i*) This clause confers on the trustees a discretion in an event in which there would be an obvious inconvenience from their want of it. It often happens that trustees are obliged to resort to the Court in consequence of the testator having neglected to arm them with discretionary powers adapted to all possible circumstances.

(*k*) This clause gives great latitude of discretion; but where the vesting is long protracted, it is, of course, important that the trustees should have ample powers of management. The words in brackets are applicable where there is a power to invest proceeds of sale and conversion of the residue in the purchase of land: see *ante*, p. 551, Form 13.

her, or their minority or respective minorities, in or towards providing a suitable residence for such child or children, until he, she, or they respectively shall attain the age of twenty-one years, or marry, and keeping up an establishment there [upon the same scale, and in the same manner, as far as may be, as my establishment shall have been ordinarily kept up previously to my death]; AND for that purpose may take either from year to year, or for any term of years, or the residue of any unexpired term, a proper and convenient dwelling-house, with or without garden, pleasure grounds, and other appurtenances, and pay all taxes, rates, assessments, costs of repairs and insurance, and other outgoings payable in respect of the dwelling-house and premises for the time being so taken, and also all expenses of keeping up such establishment as aforesaid; PROVIDED ALWAYS, that my trustees may, at their discretion, allow any child or children of mine, who shall have attained the age of twenty-one years or married, to reside in and occupy any such dwelling-house and premises so taken as aforesaid, jointly with any child or children of mine who shall for the time being be under the age of twenty-one years and unmarried, and that either without contributing to the expenses of such dwelling-house and premises, and the establishment to be kept up therein, or upon such terms as to contribution towards such expenses, and generally upon such conditions and subject to such restrictions as my trustees shall think fit.

POWERS, &c.

establishment for infant children;

Proviso that adult children may be allowed to share in the benefit of house and establishment.

28. MY TRUSTEES may at any time, at the request in writing of my said wife during her life, and, after her death, at the discretion of my trustees, lay out any sum not exceeding £—— out of the trust fund in the purchase of some freehold or leasehold messuage or dwelling-house, situate in England or Wales (but so that any leaseholds be held for an absolute term, of which not less than —— years shall be then unexpired), and such furniture, plate, linen, china, and household effects as my trustees shall consider suitable to the same, and either with or without stables, gardens, or other pleasure grounds, and other appurtenances, and in payment of the expenses of and incidental to such purchase, and also (if my trustees shall, in their discretion, think fit) of the expenses of and incidental to repairing the said messuage so to be purchased, and of making the same and the gardens and pleasure grounds thereof (if any) fit for convenient habitation and occu-

Power for trustees to purchase a house, &c. for residence of wife and unmarried daughters.

POWERS, &c.

pation: AND shall cause the same messuage, furniture, and premises, when so purchased, to be conveyed and assured unto my trustees upon trust to sell the same with the consent of my wife during her life, and, after her death, with the consent of my unmarried daughters for the time being (if any) and upon trust while the same shall be unsold to permit my said wife to have the personal use and occupation of the same messuage, furniture and premises as a residence for her and her younger children so long as she shall live and think fit to reside in the same messuage, she keeping the messuage, furniture, and premises insured against fire to the full value thereof in the names of my trustees, and also keeping the same messuage in tenantable repair, and paying the taxes and other outgoings affecting the same; AND after the death of my said wife, in trust to permit any daughters or daughter of my said wife who shall be spinsters or a spinster to have the personal use and occupation of the same messuage, furniture, and premises as their or her residence so long as they or she shall live and continue unmarried, and think fit to reside in the same messuage, they or she keeping the same so insured and in such tenantable repair and paying such taxes and other outgoings as aforesaid: AND I declare that the net proceeds which shall arise from any such sale as aforesaid shall, subject to the payment thereout of the expenses incurred in or about such sale, or otherwise in or about the execution of any of the trusts aforesaid, fall into and constitute part of my residuary personal estate: AND that the rents and profits of the said messuage and premises, or of the unsold part thereof, shall as well during any suspension as after the determination of any such occupation by way of residence as aforesaid, be considered as income arising from my said residuary personal estate, and be paid and applied accordingly; PROVIDED ALWAYS, that if any messuages or hereditaments to be purchased as aforesaid shall be held by any lease or leases, my trustees shall be fully indemnified from all liability in respect of all rents, covenants, and conditions reserved by or contained in such lease or leases.

Trustees' indemnity.

Authority to trustees to permit testator's widow

29. IF AND so long as my trustees find it impracticable or inexpedient to sell or let my messuage or mansion house at ——, and the garden and pleasure grounds thereto belonging, they may,

POWERS, &c.

if they think proper, permit my said wife to reside in and occupy the said mansion house, garden, grounds, and premises, without paying any rent or other compensation for the same; my said wife nevertheless, during her residence as aforesaid, keeping the said premises in good order, repair, and condition, and paying all taxes, rates, assessments, and other outgoings in respect thereof, including the expense of keeping on foot a policy of insurance in the sum of £——, to be effected in the names of my trustees.

to reside in his mansion-house; widow to repair and insure.

30. Notwithstanding the trusts hereinbefore contained, it shall be lawful for my said son [*name*], either before or after marriage, by deed or will, to appoint the income of the trust fund, or any part thereof, unto or in favour of any wife or widow for the time being of my said son [*name*], during her life, either absolutely, or subject to such conditions and restrictions, and in such manner in all respects, as my said son shall think proper.

Power to son to appoint income to wife for life.

31. It shall be lawful for any and every daughter of mine, notwithstanding the trusts hereinbefore contained, by will or codicil, to appoint to any husband who may survive her, during his life, any part not exceeding one moiety of the income of the share or fund, the income whereof is hereby made payable to such daughter; And also, subject to the trust hereinbefore declared in favour of the children of such daughter, and without prejudice thereto (*l*); to appoint to such husband during his life as aforesaid, the other or remaining moiety of such income.

Power to daughters to appoint life-interests to husbands.

32. If my said daughter [any daughter or daughters of mine] shall marry before she [or they respectively] shall have attained the age of twenty-one years, my trustees may, if they in their discretion think fit, at any time or times, either in contemplation of or after such marriage or marriages, settle the whole or any part of the share of [each] such daughter [respectively], in the trust fund, upon such trusts, for the benefit of such daughter so marrying and her intended husband, [and any future husband,] and children or more

Power to trustees to settle shares of daughters marrying under age.

(*l*) The effect of this power, it will be observed, is to enable the daughters by will to bequeath a *moiety* of the income to any husband as against the children, and the *entirety* as against all other objects of the trusts. For other provisions of a similar character, see *ante*, p. 526, Form 2*b*; p. 558, Form 3*h*; and p. 561, Form 4*g*.

POWERS, &C.

remote issue, [either by her then intended or any future husband,] or for the benefit of one or more exclusively of the other or others of those several objects, and in such manner and form in all respects, and upon such ulterior trusts, for the benefit of some issue of mine, or the husbands, or wives, or intended husbands or wives, or all or any of the statutory next of kin of such issue, and with such powers, provisions, and declarations as my trustees, in their uncontrolled discretion, shall think fit. AND my trustees may either themselves act, or may appoint any other persons or person to act, either solely or jointly with them or either of them, as trustees of any settlement to be made under this power, and may apply or transfer such share or shares pursuant to such settlement; AND the expense attending any and every settlement or transfer hereby directed or authorised to be made, shall be paid out of the capital of the share to which the same shall or (but for this present clause) would relate.

Power to raise and pay £—— to daughter's husband.

33. NOTWITHSTANDING the trusts hereinbefore contained, my trustees may, with the consent in writing of my said daughter [*name*], raise, by sale of a competent part of the trust fund, any sum or sums of money, not exceeding in the whole the sum of £——, and pay and apply the money so to be raised for the benefit of the present or any future husband of her the said [*daughter*], for his own absolute use and benefit; but so, nevertheless, that if the said [*daughter*] should survive her present husband, and should marry again, my trustees shall have power to raise for the benefit of such future husband, so much only of the said sum of £—— as shall not have been raised for and paid to her deceased husband or husbands.

Power to mortgage for payment of debts, funeral and testamentary expenses, and legacies (*m*).

34. [MY TRUSTEES may from time to time raise, by mortgage of any of the real and personal property hereinbefore devised and bequeathed to them in trust as aforesaid, such sum or sums of money as may be required for the purpose of paying the said expenses, debts, and legacies, or any other purpose of this my will, together with the costs and expenses attending or incident to the raising of the same (and to secure the repayment

(*m*) As a rule this form will not be required having regard to the powers given to personal representatives by sect. 39 of A. E. A. 1925.

of the moneys so raised with interest at such rate as may be agreed upon by any such mortgage or mortgages to be made for any term or terms of years, and either with or without a power of sale, and other usual or reasonable powers, clauses, and provisions), and to apply the money so to be raised in payment and satisfaction of such expenses, debts, legacies, and costs, as aforesaid, accordingly. And I declare that no person who shall advance any money upon the security of any such mortgage as aforesaid, shall be concerned to see to the application, or to be answerable for the misapplication or nonapplication of the same money, or of any part of the same, or to inquire whether any such mortgage is necessary or proper for the purposes aforesaid or any of them, or into the sufficiency or insufficiency of my personal estate for the purposes aforesaid. And I further declare that if my trustees shall raise more money by any such mortgage than shall be required for the purposes aforesaid, they shall hold the surplus upon the same trusts and with and subject to the same powers and provisions, as if such surplus were part of the proceeds of sale of my residuary real and personal estate].

POWERS, &c.

protection of mortgagees;

application of surplus of money raised.

35. My trustees may, in their absolute discretion, partition or allot my residuary estate, both real and personal, or any parts or part thereof, among or to the respective actual or presumptive objects of the trusts, or any of such objects, in satisfaction, wholly or in part, of their, his, or her shares or share in the same premises in such manner, and charged or not with such sum or sums for equality of partition, as my trustees shall think right; and may determine the value of the property so partitioned or allotted, by valuation or otherwise, as they shall think fit: And I declare that any such determination shall be conclusive and binding on all persons interested in my residuary estate, or any part thereof, under the trusts herein contained.

Power to partition among *cestuis que trust*.

36. My trustees may, at their discretion, at any time or times after my death, appropriate and allot any part of my residuary real and personal estate in or towards satisfaction of any legacy or any share in my residuary estate; And any property so appropriated or allotted, or the proceeds thereof if sold or con-

Power for trustees to appropriate property in or towards satisfaction of legacies

POWERS, &C.

and shares of residue (*n*).

verted, shall, until the same shall be payable or transferable to some person or persons absolutely entitled thereto, remain subject (so far as the nature of the property and circumstances will permit) to the trusts and powers for sale, conversion, investment, and variation of investment and postponement of sale and conversion, and of leasing and management till sale, and all other incidental or ancillary powers and provisions herein contained or implied by statute, in the same manner as if no such appropriation or allotment had taken place.

Trust to invest in purchase of lands to be settled upon trusts of will;

37. I DECLARE that my trustees shall from time to time, as and when they shall in their discretion think proper, lay out and invest the clear proceeds arising from the sale, calling in, and conversion of my residuary personal estate in the purchase of freehold lands or other hereditaments held for an estate of inheritance in fee simple, to be situate in England or Wales; AND I direct, that the hereditaments so to be purchased as aforesaid, shall be conveyed and assured to my trustees upon the trusts and for the intents and purposes in this my will expressed concerning the real estates hereby devised, or upon and for such of the same trusts, intents, and purposes as shall be then subsisting or capable of taking effect; AND in the meantime, until the said trust moneys shall be so laid out, my trustees shall, at their discretion, invest the same in their names [*or*, under their legal control (*o*)], in or upon any of the investments hereby authorised, and may from time to time, at such discretion as aforesaid, vary, alter, or transpose all or any of such investments into or for others of a nature hereby authorised: AND I declare that the dividends and annual income arising from the said investments shall go and be applied in such and the same manner in all respects as the rents and profits of the hereditaments to be purchased with the said trust moneys would have gone and been applicable, if the same had been actually purchased pursuant to the trusts aforesaid.

in the meantime to be invested;

income from investment to be applied as rents.

(*n*) The power of appropriation conferred by sect. 41 of the A. E. A. 1925, on a personal representative does not extend to a trustee in default of an express provision in the will.

(*o*) See *ante*, p. 551, note (*c*).

POWERS, &c.

General direction for investment of trust moneys.

38. My TRUSTEES are hereby authorised to invest any moneys for the time being subject to the trusts hereof, or requiring or applicable for investment under this my will or any codicil hereto, in their names [or under their legal control], in or upon, &c. (*p*).

DEVISES IN STRICT SETTLEMENT AND PROVISIONS ANCILLARY THERETO (*q*).

Devise of freeholds.

1. I DEVISE [*parcels*] [and all other freehold messuages, lands, tenements, and hereditaments whatsoever, whether in possession, reversion, remainder, or expectancy, of or to which I shall be seised or entitled at my death, or over which I shall then have a general power of appointment or disposition by will, except what I may otherwise dispose of by this my will or any codicil hereto] (hereinafter called "the settled freeholds"), with all rights, easements, and appurtenances belonging or reputed to belong thereto or held or enjoyed therewith, unto the said [*trustees*], upon the trusts, and with and subject to the powers, provisoes, and declarations hereinafter expressed concerning the same (that is to say),—

General power of appointment to one person.

2. IN TRUST for such person or persons, for such estate or estates, and interest or interests, in such shares (if more than one), and with and subject to such powers and provisions as [*name*] shall [while not under any coverture (*r*)] by any deed or deeds, revocable or irrevocable, or [whether under coverture or not (*r*)] by will or

(*p*) For form of investment clauses, see "Settlements (Personal)," *ante*, pp. 351 *et seq.*

(*q*) See also specific devises, *ante*, pp. 534 *et seq.* Other clauses relating to limitations in strict settlement of realty will be found amongst the precedents of "Settlements," *sup.*, and may be readily adapted to devises: see also p. 539, note (*z*).

As to equitable interests generally, see ss. 130 *et seq.* of the L. P. A. 1925.

(*r*) The words in brackets may be used where the donee of the power is a female and it is desired to restrain her from making an appointment by deed during coverture.

STRICT SETTLEMENT.

codicil, from time to time appoint: AND, in default of, and subject to any such appointment,—

General power of appointment to two persons jointly, and the survivor.

3. UPON SUCH TRUSTS, and with and subject to such powers and provisions as [A.] and [B.] shall by any deed or deeds, revocable or irrevocable, from time to time jointly appoint [AND in default of and subject to any such appointment, as the survivor of them shall by any deed or deeds, revocable or irrevocable, or by will or codicil, from time to time appoint]: AND in default of, and subject to, any such appointment,—

Limitation of a rentcharge.

4. UPON TRUST that my said wife, [*name*] [*or*, [*name*], the wife of the said [*tenant for life*]], and her assigns, shall receive during her life [*or*, widowhood] a yearly rentcharge of £——, to be charged upon and issuing out of the settled freeholds, and to be paid by equal quarterly payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, without any deduction whatsoever, except for death duties; the first quarterly payment of the said yearly rentcharge to be made on such of the said days of payment as shall happen next after my death [*or*, after the death of the said [*tenant for life*]]: AND subject and charged as aforesaid,—

Limitation of an equitable term of years (*s*).

5. UPON TRUST for [*special trustees*] for the term of —— years, to commence from the day of my death, without impeachment of waste, upon the trusts and with and subject to the powers, provisoes, and declarations hereinafter expressed concerning the same; AND from and after the expiration or determination of the said term of —— years, and in the meantime subject thereto and to the trusts thereof,—

Limitation of a life estate.

6. IN TRUST for [*name*] and his assigns during his life [without impeachment of waste]: with remainder,—

The same, to a woman with restraint

7. IN TRUST for [*name*], the wife of [*husband*], during her life [without impeachment of waste], but so that she shall not, during

(*s*) For the trusts of a term for raising portions, see *post*, Form 22, p. 606; and for trusts of a term for raising money for payment of debts, *post*, Precedent XVII., p. 660. See also p. 540, note (*b*).

As to the enforcement of equitable interests, see sect. 3 of the L. P. A. 1925.

her present, or any future coverture, have power to alien, charge, or otherwise dispose of the rents and profits of the settled freeholds by way of anticipation: with remainder, &c. STRICT SETTLEMENT. on anticipation.

8. UPON TRUST (*t*) during the life of [*name*] that, if at the time of my death [*or*, at the time when this present limitation shall take effect in possession], no act or event shall have been done or happened whereby the life interest hereby given to the said [*name*] in the settled freeholds, or any part thereof, would, if the same were absolutely given to him, wholly or partially vest in, or belong to, or be charged in favour of some other person or persons, then the said [*trustees*], or other the trustees or trustee for the time being of this my will shall allow the said [*name*] to enter into, and retain possession, and receive the rents and profits of the settled freeholds [without impeachment of waste] (*u*), during his life, or until some act or event (other than the exercise of any power hereby or by statute conferred on him) shall be done or happen whereby his said life interest would, if absolutely given to him, vest in, belong to, or be charged in favour of some other person or persons: AND in the event of the failure or determination during the life of the said [*name*] of the trust hereinbefore declared in his favour, I declare that my trustees shall immediately upon, and from, and after such failure or determination, enter into and during the remainder of the life of the said [*name*] retain possession of the settled freeholds, and manage the same as they shall think proper, in like manner as if they were the absolute owners thereof [*or*, in like manner as if they were the trustees appointed to manage, and superintend the management of land to the possession of which an infant is beneficially entitled under sect. 102 of the Settled Land Act, 1925]: AND [I hereby authorise my trustees, in their absolute discretion, to pay or apply the rents and profits of the settled freeholds, or any part thereof, during the remainder of the life of the said [*name*], or for any shorter period or periods, continuous or discontinuous, to

Limitation of a life interest terminable on alienation.

on failure or determination of life interest trustees to enter;

discretionary power to apply rents for benefit of bankrupt, &c.;

(*t*) See *ante*, p. 540, note (*b*).

(*u*) These words do not confer upon the tenant for life of the equitable interest any right to commit equitable waste: see sect. 135 of the L. P. A. 1925.

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or for the personal support and maintenance of the said [*name*], or his wife or children or remoter issue (if any) for the time being, or the person or persons to become entitled presumptively, contingently, or in expectancy under any of the limitations hereinafter contained, or such one or more, exclusively of the others or other of such persons, and in such manner as my trustees shall think fit: AND subject to such discretionary power] I declare that my trustees, during the remainder of the life of the said [*name*], shall pay or apply the rents and profits of the settled freeholds to or for the benefit of the persons or person who under the limitations hereinafter contained would be, for the time being, next entitled in remainder to the same rents and profits if the said [*name*] were then actually dead: or may allow such person or persons to enter into and retain possession of, occupy, manage, and enjoy the same, and receive the rents and profits thereof [including the produce of timber, cut in a due and proper course of management, and of mines, quarries, and brickfields] during the remainder of the life of the said [*name*]: PROVIDED, nevertheless, that until my trustees shall have had express notice of some such act or event as aforesaid, they shall not be responsible or liable for allowing the said [*name*] to remain in possession or receipt of the rents and profits of the settled freeholds after such act or event shall have been done or happened. PROVIDED ALSO, that the powers hereby or by statute conferred on the said [*name*], other than and except [*specify any power to be excepted*], shall continue to be exerciseable by him, notwithstanding the failure or determination of his life interest under the trusts hereinbefore contained: AND from and after the death of the said [*name*],—

destination of income during remainder of life of tenant for life.

Limitation to sons or daughters of tenant for life successively in tail (*x*).

9. UPON TRUST for the first and every other son [*or*, daughter] of the said [*name*] successively, in remainder one after another, according to their respective seniorities, in tail [male]: with remainder—

Limitations in tail general

10. UPON TRUST that all and every the persons or person to whom interests, or an interest in tail male are, or is hereinbefore

(*x*) In the case of a son or daughter dying in the testator's lifetime and leaving issue inheritable under the entail and living at the testator's death, the gift to such son or daughter is prevented from lapsing by sect. 32 of the Wills Act, 1837. See also *ante*, p. 540, note (*b*).

limited, may severally, in remainder one after another, take interests in tail general in the same order and succession as they respectively take interests in tail male: with remainder—

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by reference (*y*).

11. PROVIDED ALWAYS, that if any person to whom an interest in tail [male], by purchase, is hereinbefore limited should be born in my lifetime [or in due time after my decease] (*z*), then, and in every such case, I hereby revoke the limitation in tail hereby made to such person, and in lieu thereof I direct my trustees to hold the freehold hereditaments upon trust for such person during his or her life [without impeachment of waste], with remainder to the first and every other son of such person successively, in remainder one after another, according to their respective seniorities in tail [male]: with remainder to his or her first and every other daughter successively, in remainder one after another, according to their respective seniorities in tail [male].

Clause reducing entailed interests of persons born in testator's lifetime to life interests.

12. PROVIDED ALWAYS, that if any person to whom interests in tail male and in tail general by purchase respectively are hereinbefore limited should be born in my lifetime, then, and in every such case, I hereby revoke the limitations hereby made in favour of such person, and in lieu thereof I direct my trustees to hold the hereditaments comprised in the limitations so revoked, upon trust for such person during his or her life; with remainder to the first and every other son of such person successively, in remainder one after another, according to their respective seniorities, in tail male; with remainder to the same first and every other son, successively, in remainder one after another, according to their respective seniorities, in tail general; with remainder to the first and every other daughter of such person successively, in remainder one after another, according to their respective seniorities, in tail male; with remainder to the first and every other daughter of such person successively, in remainder one after another, according to their respective seniorities, in tail general

Another form of clause reducing estates in tail male and in tail of persons born in testator's lifetime to estates for life;

(*y*) See also p. 540, note (*b*).

As to entailed interests in realty or personalty, see sect. 130 of the L. P. A. 1925.

(*z*) By sect. 55 (2) of the A. E. A. 1925, references to a child or issue living at the death of any person include a child or issue *en ventre sa mère* at the death.

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reduction not to apply to children *en ventre sa mère.*

[And I declare that no person not actually born at the time of my death shall be deemed to be born in my lifetime for the purpose of the proviso and substituted limitations lastly hereinbefore contained] (*a*).

Series of limitations in strict settlement (*b*); to testator's eldest son for his life; remainder, to first and other sons of the said son in tail male; remainder, to each of testator's other sons for life, and to their sons successively in tail male; to sons of testator's first son successively in tail general; remainder, to daughters of testator's first son successively in tail general; remainder, to sons and daughters in tail.

13. Upon trust for my eldest son, [*name*], and his assigns, during his life, without impeachment of waste; with remainder upon trust for the first and every other son of my said son, [*name*], successively, and in remainder one after another in tail male; with remainder upon trust for each of my other sons during his life, without impeachment of waste; with remainder upon trust for the first and every son successively of each such other son, in remainder one after another in tail male, so that the elder of my said other sons and his first and other sons and the heirs male of their respective bodies successively may be preferred to and take before the younger of my said other sons and his and their first and other sons and the heirs male of their respective bodies; And after the determination or failure of the several estates hereinbefore limited as aforesaid, upon trust for the first and every other son of my said son, [*eldest son*], successively, and in remainder one after another in tail; with remainder upon trust for the first and every other daughter of the said [*eldest son*], successively, in remainder one after another in tail; with remainder upon trust for the first and every other son successively of my second and every other subsequently born son in tail; with remainder upon trust for the first and every daughter successively of my second and every other subsequently born son in tail, so that the first and every

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(*a*) See the A. E. A. 1925, s. 55 (2).

As to the order in which the several stocks or classes of issue are admitted.

(*b*) The limitations in the above form admit the several stocks and classes of issue in the following order, namely, the testator's eldest son and his first and other sons, the latter taking estates in tail *male;* next, the younger sons and their sons, the latter also taking estates in tail *male;* next, the sons and daughters in succession of the testator's eldest son take estates tail *general;* next, the sons and daughters also in succession of the testator's younger sons take estates tail *general;* next are admitted the eldest and other daughters of the testator and their first and other sons, the latter taking estates in tail *male* and tail *general;* and, lastly, the first and other daughters of testator's *daughters* take estates in tail *general.* These limitations embrace the whole line of the testator's descendants. See also p. 540, note (*b*).

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other son, and the first and every other daughter of the elder of my said second and other subsequently born sons, as tenants in tail as aforesaid, may take before and be preferred to the first and other sons in tail and the first and other daughters in tail of the younger of my said second and other subsequently born sons; AND after the determination or failure of the several estates hereinbefore limited as aforesaid, upon trust for my daughter, [*name*], and her assigns during her life, but without power to dispose of the rents and profits thereof, or any part thereof, by way of anticipation; AND from and after the death of my said daughter, upon trust for the first and every other son of my said daughter successively in tail male; with remainder upon trust for the first and every other son of my said daughter successively in tail; with remainder upon trust for the first and every other daughter of my said daughter successively in tail; with remainder upon trust for each of my other daughters and her assigns during her life, but without power to dispose of the rents and profits, or any part thereof, by way of anticipation; AND from and after the death of each such daughter respectively, upon trust for the first and every other son successively of each such daughter in tail male; with remainder upon trust for her first and every other son successively in tail; with remainder upon trust for her first and every other daughter successively in tail; so that the estate for life hereinbefore limited to the elder of my second and other subsequently born daughters, and to her first and other sons successively in tail male, and to her first and other sons successively in tail, and to her first and other daughters successively in tail, shall have precedence to and take effect before the estates for life limited to the younger of my second and other subsequently born daughters, and her and their first and other sons successively in tail male, and her and their first and other sons successively in tail, and her and their first and other daughters successively in tail; AND from and after the determination or failure of the several estates hereinbefore limited as aforesaid, upon trust for the person who would have been my heir under the general law in force prior to the year 1926 (*d*).

general of testator's second and other sons (*c*); in default of such issue, to testator's daughter for life for her inalienable use; after her death, to her first and other sons in tail male; remainder, to her first and other sons in tail general; remainder, to her first and other daughters in tail general; remainder, to each of testator's other daughters successively for life for their inalienable use; and after the death of each such daughter to her first and other sons in tail male; remainder, to her first and other sons in tail general; remainder, to her first and other daughters in tail general; remainder.

(*c*) See also p. 540, note (*b*).

(*d*) See sect. 131 of the L. P. A. 1925.

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Limitations in strict settlement to testator's sons successively and their issue in tail male;

to testator's daughters concurrently and their issue in tail male;

cross remainders among the daughters and their issue. On failure of issue of all the daughters,

to testator's children concurrently in tail general, with cross remainders;

14. UPON TRUST for my eldest son, [*name*], and his assigns, for his life without impeachment of waste; with remainder upon trust for his sons successively, according to their respective seniorities, in tail male; with remainder upon trust for my son, [*second son*], and his assigns, for his life, without impeachment of waste; AND, after his death, upon trust for his sons successively, according to their respective seniorities, in tail male; AND, for default of such issue, to the use of my son, [*third son*], and his assigns, for his life, without impeachment of waste; AND, after his death, upon trust for his sons successively, according to their respective seniorities, in tail male; AND, for default of such issue, upon trust for my daughters, [*names*], and their respective assigns, during their respective lives, in equal shares as tenants in common (*e*), without impeachment of waste. AND as to the respective shares therein of each of them my said daughters after her death, upon trust for her sons successively, according to their respective seniorities, in tail male; AND on failure of the issue male of any one or more of my said daughters, then and so often as the same shall happen, as to as well the share or respective shares originally limited, upon trust for the daughter or daughters whose issue shall so fail, as the share or respective shares which by virtue of this present clause shall have become vested in her or them, or her or their issue male, upon trust for the other or others of my said daughters, and her or their respective assigns, during her or their life or respective lives, in equal shares as tenants in common, without impeachment of waste; AND after the death of any such last-mentioned daughter, then as to the share or shares lastly hereinbefore limited, upon trust for her, upon trust for her sons successively, according to their respective seniorities, in tail male; AND if there should be a failure of such issue male of all my said daughters but one, then, as to the entirety of all the said estates, upon trust for such only daughter and her assigns during her life, without impeachment of waste; AND, after her death, upon trust for her sons successively, according to their respective seniorities, in tail male; AND, for default of such issue, upon trust for my said several sons and daughters as tenants in common in tail general, with cross-

(*e*) As to land held on trust for parties in undivided shares, see S. L. A. 1925, s. 36; L. P. A. 1925, s. 34. A tenancy in common can, of course, still be created to take effect behind a trust for sale.

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remainders between and among them in tail general; AND, if all my said children except one should die without issue, upon trust for such only remaining child in tail general; AND, for default of such issue, upon trust for the person who would have been my heir under the general law in force prior to 1926.

ultimate remainder to testator's heir.

15. UPON TRUST for my elder daughter, [*name*], and her assigns, during her life; with remainder upon trust for the first and every other son of the said [*elder daughter*], successively, and in remainder, one after another, in tail male; with remainder upon trust for the first and every other son of the said [*elder daughter*], successively, and in remainder, one after another, in tail; with remainder upon trust for the first and every other daughter of the said [*elder daughter*], successively, and in remainder, one after another, in tail male; with remainder upon trust for the first and every other daughter of the said [*elder daughter*], successively, and in remainder, one after another, in tail; with remainder upon trust for my younger daughter, [*name*], and her assigns, during her life; with remainder upon trust for the first and every other son of the said [*younger daughter*], successively, and in remainder, one after another, in tail male; with remainder upon trust for the first and every other son of the said [*younger daughter*], successively, and in remainder, one after another, in tail; with remainder upon trust for the first and every other daughter of the said [*younger daughter*], successively, and in remainder, in tail male; with remainder upon trust for the first and every other daughter of the said [*younger daughter*], successively, and in remainder, one after another, in tail; AND in default of such issue, upon trust for the person who would have been my heir under the general law in force before 1926.

Limitations to testator's elder daughter for life; remainder, to sons of elder daughter successively, in tail male (*f*); remainder, to her sons in tail general (*f*); remainder, to her daughters in tail male (*f*); remainder, to her daughters in tail general (*f*); remainder, to younger daughter of testator for life; remainder, to sons of younger daughter in tail male (*f*); remainder, to her sons in tail general (*f*); remainder, to her daughters in tail male; remainder, to her daughters in tail general (*f*);

16. UPON TRUST to sell the said hereditaments and invest the proceeds of such sale in manner herein authorised [in any manner authorised by law for the investment of trust funds], and to pay the income therein or of the investments representing the same to all and every the daughters and daughter of the said [*name*], if more than one, in equal shares, as tenants in common in tail [male]; AND if and so often as there should be a failure of issue

(*f*) See also *ante*, p. 540, note (*b*).

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[male of any such daughter, then as to both her original share, and also such other share or shares in the said trust premises as by virtue of this present clause shall have accrued to her or her issue [male]; upon trust for the others or other of such daughters, if more than one, in equal shares, as tenants in common in tail [male]; AND if there should be a failure of issue [male] of all such daughters but one, or if there should be only one such daughter, then, as to the entirety of the said trust premises, upon trust for such one or only daughter in tail [male]; AND, in default or on failure of such issue, upon trust for [*other limitations*].

Limitation to tenant for life's daughters in tail (*f*), as tenants in common; cross remainders in tail (*f*).

17. UPON TRUST for all the daughters of [*name*], as tenants in common in tail [male], with cross-remainders between and among them as to both their original and accruing shares as tenants in common in tail [male]; AND if there should be but one such daughter, then upon trust for such one or only daughter in tail [male]; with remainder, &c.

The same (*short form*).

18. PROVIDED ALWAYS, that, if any of the daughters of the said [*name*] shall have died in my lifetime leaving issue [male] who shall survive me, the heirs [male] of the body or bodies of such daughter or daughters shall take the like share or shares, estate or interest, as well original as accruing in the hereditaments hereby devised in settlement which such daughter or daughters respectively would have taken if she or they had died immediately after my death, and with the like remainders over on the failure of issue [male] of such daughter or respective daughters.

Proviso substituting for daughters dying in testator's lifetime, their respective issue.

19. EVERY life estate or interest hereby limited in the hereditaments hereinbefore devised in settlement shall be without impeachment of waste, and, as to any female tenant for life, without power to dispose of the rents and profits of the same hereditaments, or any part thereof, by way of anticipation during any coverture.

General proviso as to waste and anticipation (*g*).

20. EVERY tenant for life or in tail [male or in tail] who shall become entitled in possession to the hereditaments hereinbefore devised in settlement under the limitations herein contained, shall

Proviso as to repairs of mansion house (*g*).

(*f*) See also *ante*, p. 540, note (*b*).

(*g*) As to equitable waste, see L. P. A. 1925, s. 135.

keep my said mansion house and the buildings, gardens and pleasure grounds belonging thereto, in good and tenantable repair and condition. STRICT SETTLEMENT.

21. EVERY person (not being a peer or peeress) who for the time being shall be entitled, by virtue of the limitations [*or*, trusts] hereinbefore contained, as [equitable] tenant for life or in tail [male or in tail] in possession, in the said hereditaments devised in settlement by this my will, and not previously having the surname and arms hereinafter required to be used, shall, within twelve calendar months after he or she shall become so entitled, or being an infant within twelve calendar months after he or she shall attain the age of twenty-one years, and also the husband (not being a peer) of any female who shall become so entitled, shall, within twelve calendar months after his wife shall become so entitled, or after his marriage to her, whichever of these events shall last happen (unless prevented by death), take and use upon all occasions the surname of —— [*testator's surname*], either alone or in addition to his or her own surname (but so nevertheless that the name of —— shall be the last or principal name), and also bear my family arms [either alone or] quartered with his or her own family arms, and shall, within the twelve calendar months aforesaid (unless prevented by death), take such proceedings or steps as may be necessary to authorise him or her to assume such surname and arms; AND in case such person should refuse, neglect, or fail to comply with this proviso or direction in any respect within the twelve calendar months aforesaid, and also in case any such person, who shall previously have the surname and arms aforesaid, or who shall have assumed the surname and arms aforesaid in compliance with this present proviso, should at any time thereafter discontinue to use the same, then and in either of the cases aforesaid, and immediately after

Direction to devisees to assume testator's name and arms (*h*);

In case of neglect or failure, the estate of such person to cease (*i*);

(*h*) As to these clauses, see *ante*, p. 447; and see Vaizey on Settlements, vol. ii. pp. 1262 *et seq.*, where this subject is very fully and ably discussed.

(*i*) As to the meaning of the words "refuse or neglect" and their applicability to infants, see *Re Edwards*, [1910] 1 Ch. 541. If there is no gift over on non-compliance with name or arms clause, the clause becomes a mere expression of desire: see *Re Evans' Contract*, [1920] 2 Ch. 469; 89 L. J. Ch. 626.

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the expiration of the twelve calendar months aforesaid, or immediately upon such discontinuance as aforesaid (as the case may be), the [equitable] estate for life or estate tail or respective estates tail of every person, or the wife of every person (as the case may be), so refusing, neglecting, failing, or discontinuing as aforesaid, in the hereditaments hereby devised in settlement, shall absolutely cease and determine, and the same hereditaments shall in that case go and devolve to the person or persons next in remainder or reversion under the limitations hereinbefore contained, in the same manner as if the person who, or whose husband, shall so refuse, neglect, fail, or discontinue, being a tenant for life, were then dead, or being a tenant in tail [male or in tail] were then dead without having had heritable issue. [PROVIDED ALWAYS, that from and after the determination under the proviso lastly hereinbefore contained of the estate hereinbefore limited to any person who, or whose husband, shall so refuse, neglect, fail, or discontinue as aforesaid, and who shall be a tenant for life under the trusts hereinbefore contained, the hereditaments in respect of which such event shall have happened shall remain and be held by the said [*trustees*] during the life of such person, upon trust, from time to time to pay the rents and profits thereof, or permit the same to be received by the person or persons for the time being next entitled in remainder, under or by virtue of such of the ulterior trusts affecting the said hereditaments as shall have actually become vested and taken effect.]

proviso as to appointment made by persons neglecting, &c.

AND I hereby declare, that, in the event of the cesser or determination of the estates or estate of any person under the proviso in that behalf hereinbefore contained, by reason of the neglect or failure of such person, or the husband of such person, to comply with the proviso and direction aforesaid, any appointment or appointments which any such person may have made in favour of his or her wife or husband, or children respectively, by virtue of any the powers hereinbefore contained shall be absolutely null and void [*or*, shall not be prejudiced or affected].

Declaration of trusts of a term to raise portions for testator's younger children.

22. THE SETTLED freeholds are hereby limited to the said [*trustees*] for the said term of —— years, upon trust that if there shall be any younger child or children of mine (meaning thereby any child or children who survive me, and being male, attain the age of twenty-one years, or, being female, attain that age or

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marry [or who die in my lifetime leaving issue surviving me], other than any son or daughter of mine who on my death, or before his or her attaining the age of twenty-one years, shall become entitled hereunder to the settled freeholds for the first estate for life), then my trustees (*k*) shall, by mortgage of the settled freeholds, or a competent part thereof, for the whole or any part of the said term, or by the felling and sale of timber growing thereon, or by and out of the rents and yearly profits of the premises, or by all or any of those ways and means, or by such other means as my trustees shall think expedient, raise the sum of £—— [free from death duties] for the portion of each younger child of mine, and pay the same to him or her, or to his or her representatives; AND upon further trust that my trustees shall, by any such means as aforesaid, raise such annual sum not exceeding £—— [free from death duties], as they shall think fit, for the maintenance, education, or benefit of each child for the time being entitled in expectancy to a portion, and apply the same accordingly, either directly or by paying the same to his or her guardian or guardians without seeing to the application thereof: PROVIDED ALWAYS, that my trustees may, at any time or times, in their discretion, by all or any of the means aforesaid, raise any sum or sums of money not exceeding in the whole one-half of the then presumptive or expectant portion of any child of mine, and apply the same for or towards the advancement or benefit of such child as they shall think proper.

advancement clause (*l*);

23. IT SHALL be lawful for any and every male person, who by virtue of this my will shall become entitled to the actual possession or to the actual receipt of the rents and profits of the

Power to male tenants for life (who shall become entitled in possession) to jointure.

(*k*) If separate trustees of the "portions" term are appointed, then for the words "upon trust . . . that my trustees," substitute—

"Upon trust . . . that the said [*trustees*], or the survivors or survivor of them, or other the trustees or trustee for the time being of the said term of —— years (hereinafter called 'the portions trustees')";

and substitute "the portions trustees" for "my trustees" throughout the clause.

(*l*) An express maintenance clause may be dispensed with, in reliance on the provisions contained in the T. A. 1925, s. 31.

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settled freeholds, either before or after he shall become so entitled, but subject and without prejudice to the trusts, limitations, and powers preceding or overriding the estate of the person exercising this present power, at any time either before or after marriage, by deed revocable or irrevocable, or by will or codicil, to appoint to any woman whom he may marry a rentcharge or rentcharges, not exceeding the annual sum of £——, to be issuing out of, and charged upon the settled freeholds, for her life, or any less period, to be payable by way of jointure at such times and in such manner as the person exercising the present power shall direct, without any deduction [except for death duties]; AND ALSO to charge the settled freeholds, or any part or parts thereof, with any sum of money not exceeding in the whole the sum of £——, for the portion or portions of any of their respective children other than and besides an eldest or only son for the time being entitled to the said estates for an estate in tail [male] in possession, or in remainder expectant upon the death of his parent exercising the said power, and to appoint the hereditaments so to be charged to any person or persons for a term of years, in trust to raise the portion or portions so to be charged.

Power to charge portions.

Power to female tenants for life to appoint rentcharges to husbands, and portions.

24. IT SHALL be lawful for each and every female person hereby made tenant for life of the settled freeholds, either before or after she shall become actually entitled, under the limitations hereinbefore contained, to the possession or receipt of the rents and profits thereof (but subject and without prejudice to the estates and limitations (if any) prior to the estate for life of the person exercising this present power), at any time either before or after marriage, by deed with or without power of revocation, or by will or codicil, to appoint to or in favour of any husband who shall survive her a rentcharge or rentcharges, not exceeding in the whole the annual sum of £——, to be issuing out of and charged upon all or any of the settled freeholds for the life of such husband, or for any less period, and to be paid at such times and in such manner as the person exercising this present power shall direct, without any deduction except for death duties; AND ALSO, &c. [*as in Form* 23].

Power to appoint rentcharges to

25. ANY AND every person hereby made tenant for life, being a female, shall have the same or the like power of appointing one

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husbands by reference.

or more yearly rentcharge or rentcharges to or in favour of any husband surviving her, as is and are hereinbefore reserved to the several persons hereby made tenants for life, being males, of appointing rentcharges to and in favour of their surviving wives as aforesaid.

Proviso limiting the aggregate amount of rentcharges affecting the lands at one time.

26. PROVIDED ALWAYS, that the settled freeholds shall not, nor shall any part thereof, by virtue of the power [respective powers] hereinbefore contained, be at any one time subject or liable to the payment of any annual sum or sums exceeding in the whole the sum of £——; AND if by virtue thereof the same shall or would, in case this present proviso were not inserted, be charged with a greater annual sum in the whole than £——, the payment of the annual sum occasioning such excess, or such part thereof as occasions the same, shall, during the time of such excess, be suspended.

Proviso limiting the amount of portions in the whole to a given sum.

27. PROVIDED ALSO, that the settled freeholds shall not, under or by virtue of the power hereinbefore in that behalf contained, be liable to the payment of any larger sum or sums of money for portions than the sum of £—— in the whole.

Power to charge a gross sum by will.

28. IT SHALL be lawful for the said [*name*], if there shall be an entire failure of his issue at the time of his death, by his will or any codicil thereto, to charge all the settled freeholds, or any part or parts thereof, with any sum or sums of money not exceeding in the whole the sum of £——, with interest thereon at any rate not exceeding —— per cent. per annum, for the benefit of such persons or person, or for such purposes or purpose whatsoever as he shall think fit: AND in manner aforesaid to appoint for any term or terms of years to any person or persons, with or without impeachment of waste, the said hereditaments so to be charged as aforesaid for securing, raising, and paying such sum or sums respectively, with interest at the rate aforesaid.

Appointment of trustees of settlement for the purposes of the Settled Land Act.

29. MY TRUSTEES shall be the trustees of the settlement hereby created ["of the said hereditaments at ——" *or* "of the hereditaments hereby devised in strict settlement"], for the purposes of the Settled Land Act, 1925.

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Proviso as to destination of accumulations of rents and profits (*m*).

30. If any person who would, if of full age, be entitled to the possession or receipt of the rents and profits of the settled freeholds shall die, being a male, under the age of twenty-one years, or, being a female, under that age, and without having been married, then my trustees shall stand possessed of the rents and profits of the same hereditaments received by them during the minority of the person so dying and all accumulations and investments thereof, or so much thereof as shall not have been applied under any statutory power, and invest and apply the same as if the same were capital moneys arising under the Settled Land Act, 1925, from the settled freeholds.

Extension of powers under the Settled Land Act.

Introductory clause (*n*).

31. Notwithstanding anything contained in the Settled Land Act, 1925 (or in any Act or Acts for the time being in force relating to settled lands respectively), the following powers in addition to, or extension of the powers conferred by such Act shall (so far as not forbidden by any Act or Acts for the time being in force) be hereby conferred on, and vested in, and exerciseable by every tenant for life, or person having the powers of a tenant for life (including a statutory owner) under the Settled Land Act, of or over the settled freeholds, that is to say:—

Notices to trustees of settlement, &c. dispensed with (*o*).

(i) Any tenant for life, or person having the powers of a tenant for life over the settled freeholds (*p*), may make a [sale, exchange, partition] lease, [mortgage, or charge], in exercise of any of the powers conferred on him by the Settled Land Act, without giving previous notice of his intention to exercise any such power to any trustee, or to the solicitor of any trustee, and without the leave of the Court.

(*m*) See, as to the advisability of inserting such a clause, *ante*, p. 582, note (*d*).

(*n*) Where it is desired to confer on tenants for life and trustees a series of powers in addition to or extension of the statutory powers, it may be convenient to group them together, proceeded by an introductory clause, and consecutively numbered.

(*o*) See, as to notice of intention to exercise the statutory powers, sect. 101 of the S. L. A. 1925.

(*p*) For an enumeration of limited owners having the powers of a tenant for life, see sect. 20 of the S. L. A. 1925.

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(ii) Under a mining lease, whether the mines or minerals leased are already opened and in work or not, no part of the rent shall at any time be set aside as capital money arising under the said Act, but the whole of such rent shall go as rents and profits.

Mining rents not to be capitalised (*q*).

(iii) Any lease of the settled freeholds or any part thereof or of any easement, right, or privilege of any kind over or in relation to the same may be made for any purpose whatever, whether involving waste or not, and for any term, and grants may be made of the said lands or any part thereof in consideration of rents in perpetuity, either by way of rentcharge, or secured by a condition of re-entry on non-payment thereof or otherwise as the person or persons for the time being exercising the powers of making leases and grants lastly hereinbefore contained shall think proper or expedient.

Power to make long leases, and fee farm grants (*r*).

[(iv) The principal mansion house on the land hereby settled [*or*, my mansion house called —— Hall] and the demesnes thereof, and other lands usually occupied therewith may be sold or leased by any tenant for life, or person having the powers of a tenant for life, under the trusts and provisions herein contained without the consent of the trustees of the settlement hereby created or an order of the Court.]

Power for tenants for life to sell or lease principal mansion house, park, &c. (*s*).

(v) Any part or parts of the settled freeholds may be given in exchange for land in Scotland [or Ireland]; AND capital money arising under the Settled Land Act, 1925, from the premises

Extension of powers to exchange and purchase lands (*t*).

(*q*) See, as to the capitalisation of mining rents, sect. 47 of the Act of 1925. The statutory restriction in this respect is often found to be inconvenient. As to what is a "contrary intention" within the meaning of sect. 11 of the S. L. A. 1882 (now re-enacted by sect. 47 of the S. L. A. 1925), see *Re Rayer*, [1913] 2 Ch. 210; *Re Hanbury's S. E.*, *ibid.* 357.

(*r*) As to the terms for which leases may be granted under the statutory powers, see sect. 41 of the Act of 1925; and see also sect. 46 of the same Act giving power to the Court in certain cases to authorise leases for any term.

Statutory powers of leasing.

(*s*) As to sales and leases of the principal mansion house, &c., see S. L. A. 1925, s. 65. This clause merely declares the law governing a settlement made after the commencement of the S. L. A. 1925, and may safely be omitted.

(*t*) See, as to these powers, S. L. A. 1925, ss. 40, 78.

STRICT SETTLEMENT.

hereby settled may be applied in the purchase of lands and hereditaments in such last mentioned countries, or either of them.

Extension of powers of investment and application of capital moneys.

(vi) Capital money arising under the Settled Land Act, 1925, or by virtue of the exercise of any power herein contained, or other capital money for the time being requiring or capable of being invested, subject to the payment of claims properly payable thereout and to the application thereof for any special object for which the same shall have been raised, may as and when received be, with the consent in writing of the tenant for life for the time being if of full age and competent to act, or of the statutory owner or other the person entitled to exercise the powers of a tenant for life under the Settled Land Act (*u*), invested in or upon any of the investments hereby authorised for the investment of trust moneys (*x*).

Power to raise money on mortgage for purposes not specified in Settled Land Act.

(vii) Any tenant for life or person having the powers of a tenant for life over the settled freeholds may raise any sum or sums of money not exceeding in the whole the sum of £——, to be secured by mortgage of or charge upon all or any of the settled freeholds, with interest for the same at any rate not exceeding 5 per cent. per annum for the purpose of, &c. [*e.g.*, making any improvement or carrying out any special works which are not authorised by the Settled Land Act, 1925]; AND for that purpose shall have the same powers in all respects as he would have if the money so to be raised were required for one of the purposes for which a tenant for life is by sect. 71 of the Settled Land Act, 1925, empowered to raise money on mortgage (*y*). AND no person lending money purporting to be borrowed in exercise of this power shall be concerned to inquire as to the purpose for which it shall be alleged to be borrowed, or bound to see to the application thereof, or as to the propriety, regularity, or extent of any exercise of this present power; AND the money which shall be borrowed in exercise of this power shall be applied in or towards

Protection of mortgagees.

(*u*) *E.g.*, a committee or receiver where the tenant for life is a lunatic or a defective: see S. L. A., s. 28.

(*x*) As to investment of capital moneys, see S. L. A. 1925, s. 75.

(*y*) By sect. 71 (1) of the S. L. A. 1925, a tenant for life is empowered to raise money by a legal mortgage for (*inter alia*) payment for any improvement authorised by the Act or by the settlement.

payment for, &c. [*e.g.*, such an improvemant as aforesaid] and subject thereto shall be deemed to be capital money arising under the Settled Land Act, 1925, and be applicable accordingly. STRICT SETTLEMENT.

32. I DEVISE and bequeath all my leasehold messuages, tenements, and lands situate, &c., with the appurtenances thereto belonging, unto the said [*trustees*], for all the estate, term, and interest therein which I shall have or be able to dispose of by will at the time of my death, upon trust out of the yearly rents and profits of the same leasehold premises, to pay and perform the rents and covenants reserved and contained by and in the several leases by which the same premises are respectively held; AND subject thereto, upon such trusts, and with and subject to such powers, provisoes, and declarations as shall correspond with the trusts, powers, provisoes, and declarations hereinbefore declared and contained concerning the settled freeholds. Bequest of leaseholds upon trusts to correspond with trusts declared of the freeholds.

33. I BEQUEATH all my diamonds, with the settings thereof, plate, pictures, engravings, drawings, sculptures, books, linen, and articles of vertu whatsoever [being at the time of my death in my house called —— Hall (including any articles which shall or may have been removed therefrom for repair or other temporary purpose, or which shall or may have been purchased by me, and Bequest of chattels as heirlooms (*z*);

(*z*) By sub-sect. (3) of sect. 130 of the L. P. A. 1925—

"Where personal estate (including the proceeds of sale of land directed to be sold and chattels directed to be held as heirlooms) is, after the commencement of this Act, directed to be enjoyed or held with, or upon trusts corresponding to trusts affecting land in which, either before or after the commencement of this Act, an entailed interest has been created, and is subsisting, such direction shall be deemed sufficient to create a corresponding entailed interest in such personal estate."

By sect. 67 of the S. L. A. 1925, where personal chattels are settled so as to devolve with settled land, a tenant for life of the land may sell the chattels or any of them, but (sub-sect. (3)) only by order of the Court.

If it is desired that the tenant for life shall be able to deal with the heirlooms without applying to the Court, express powers for this purpose must be conferred upon him by the settlor: see sect. 109 of the S. L. A. 1925.

STRICT SETTLEMENT.

directed to be sent to my said house)], to the said [*trustees*], upon trust, to permit the same to devolve as heirlooms with the said house, upon the trusts hereinbefore declared of and concerning my said house. And I direct that as soon as conveniently may be after my death, my trustees shall cause schedules and inventories to be taken of the said diamonds and other articles, and two copies to be made thereof, and shall sign each of the said copies and keep one of them, and leave the other at my said house; and shall from time to time cause the same copies to be signed by the person for the time being entitled in possession to the said house under this my will. And I direct my trustees at all times to keep the said diamonds and other articles adequately (so far as may be) insured against loss or damage by burglary, theft, or fire, and from time to time to inspect and examine into the state of the said articles of vertu and other effects, and cause such reparations and restorations and replacings to be made thereof from time to time as they shall think proper; such insurances, reparations, restorations, and replacings to be made at the expense of the person or persons for the time being entitled to hold, use, and enjoy the said diamonds and other articles under the trusts of this will.

direction to trustees to take an inventory;

and from time to time examine the effects.

TRUSTEE CLAUSES.

Power to specified tenants for life successively to appoint new trustees (*a*).

1. The power of appointing new trustees of this my will shall be exerciseable by my said wife during her widowhood, and after her death or marriage by the said [*next tenant for life*] [*or*, by my said daughter, [*name*], and her said husband, [*name*], during their joint lives, and by the survivor of them during his or her life].

Power to tenants for life of realty to appoint new trustees.

2. The power of appointing new trustees of this my will shall be exerciseable by the person or persons who for the time being shall, by virtue of any of the limitations of this my will, be in the actual possession of or beneficially entitled to the receipt of the rents and profits of the hereditaments hereinbefore devised, or such of the same persons respectively as shall be of full age and otherwise competent.

(*a*) See T. A. 1925, ss. 36, 37.

TRUSTEE CLAUSES.

3. The personal representatives of the last surviving or continuing trustee of my will or of any special trust fund comprised therein (as the case may be), shall have power to appoint themselves, or some or one of them, either alone or jointly with any other person or persons, or to appoint any other person or persons to be a trustee or trustees of my will or of such special trust fund (as the case may be).

Power for representatives of last surviving or continuing trustee to appoint themselves trustees of the will or of distinct trusts under the same will (*b*).

4. Provided always, and I declare that the power lastly hereinbefore contained is not intended to apply to the trusteeship hereby constituted in respect of the said trust fund or sum of £—— hereinbefore bequeathed or settled for the benefit of my said sister, [*name*], and her children; but that when and so often as a vacancy shall occur therein, a new trustee or trustees shall be appointed by the said [*sister*], and the last mentioned trust fund shall thereupon, at the cost of such trust fund, be transferred to, or vested in such trustee or trustees accordingly.

Special power of appointment in regard to a separate trust fund.

5. In case of the death or absence from the colony of —— for more than twelve calendar months, of any trustee of my said real and personal property in that colony, so devised and bequeathed to the said [*trustees of property in colony*], upon the trusts hereinbefore declared concerning the same, or in any other event by reason of which such a vacancy would occur, as mentioned in the 36th section of the Trustee Act, 1925, then it shall be lawful for the surviving or continuing trustees or trustee of such last mentioned property, or the personal representatives of such last surviving or continuing trustee, from time to time [with the consent of such one of my said daughters as shall be interested in such trust property (if living)], to appoint a person or persons resident in the said colony, to be a trustee or trustees of the same property, separately from the other trust property under my will,

Power to appoint separate trustees in respect of property in a colony.

(*b*) By T. A. 1925, s. 37 (1) (b), "a separate set of trustees not exceeding four may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property." Formerly, apart from any express provision in the will, the donees of the statutory power could not appoint themselves: *Re Skeats*, 42 Ch. D. 522; *Re Newen*, [1894] 2 Ch. 297; *Re Sampson*, [1906] 1 Ch. 435. But now, by sub-sect. (1) of sect. 36 of the T. A. 1925, the persons exercising the power may appoint themselves.

TRUSTEE CLAUSES.

either in the room of the trustees or trustee of my property in the said colony existing before such appointment, or jointly with any such trustees or trustee; AND with all such powers and authorities in respect of the property whereof he or they shall be appointed trustee or trustees, so far as applicable, as are herein given to the trustees of my other property hereby appointed (*c*).

Proviso that trustee residing elsewhere shall cease to be trustee.

6. ANY PERSON being a trustee of my will, who shall cease to reside in the county of ——, or within —— miles of such county, shall (*d*) be deemed to be a trustee incapable of acting in the trusts or powers contained in my will within the meaning of the 36th section of the Trustee Act, 1925, and such trustee shall thereupon cease to be a trustee of my will.

General proviso as to consents to appointment of new trustees (*e*).

7. I DECLARE that the statutory power of appointing new trustees of this my will [*or*, of any trust fund or trust property settled by this my will] shall from time to time be exerciseable with the consent in writing of the person or persons, being of full age and not under any disability, for the time being entitled to the [rents and profits or] income of the said trust premises [*or*, of such trust fund or trust property]; and if and so long as there shall be no such person, at the discretion of the person in whom [subject as is next hereinafter provided] such statutory power shall for the time being be vested.

Indemnities to trustees (*f*).

8. IN ADDITION to the statutory provisions in relation to the indemnity of trustees, my trustees shall not be answerable or

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(*c*) The introduction of the special power will not, of course, supersede the necessity for a power to appoint trustees of the general estate, which will be in the usual form.

Provision in case trustee of a farm, &c. removes from the neighbourhood.

(*d*) This clause is useful when trustees are required to manage a trading or farming concern, or when the trusts are otherwise of such a nature as to require constant or frequent personal superintendence at a particular locality.

(*e*) The variations (in brackets) are applicable where separate sets of trustees are appointed by the will.

Statutory provision for the indemnity of trustees.

(*f*) The effect of sect. 30 of the T. A. 1925, is that indemnity clauses may generally be dispensed with, except where it is desired specially to indemnify trustees against the consequences of acts for which they would otherwise be responsible, as for breaches of trust. As to the duties of trustees with reference to the investment of trust

TRUSTEE CLAUSES.

accountable for any defect or insufficiency in the title or evidence of title to any hereditaments or property which they may purchase, or on the security of which they may lend money, under or by virtue of this my will, or, on lending any money on leasehold security, for dispensing wholly or partially with the investigation or production of the title of any lessor (*g*), or for any deficiency or depreciation in value of any hereditaments, investments, or other property in or upon which the said trust moneys, or any part thereof, may be invested, or for any loss which may happen to the trust estate. AND if any hereditaments, subject to rent-charges or rents or other charges, or to any covenants or conditions shall become subject to the trusts of this my will, my trustees shall be entitled to be indemnified out of the trust property for the time being subject to the like trusts and the rents, profits, and income thereof, in respect of any liability they may incur by reason or in respect of such rents, charges, covenants, or conditions, or of any covenants entered into by them on the purchase of such hereditaments or otherwise in relation thereto.

Special indemnity in respect of purchased land.

9. I AUTHORISE my trustees to retain out of the income of the trust premises in every year, for each of my trustees for the time being acting in the trusts of this my will, an annual sum of £——, to be paid to him half-yearly, as a remuneration for his services [in addition to any payments for professional services], the first of such payments to be made at the expiration of six calendar months after my death, but so that this provision shall cease to

Authority to trustees to deduct annuities as remuneration for services.

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moneys, and their liability in respect of leaving trust funds in the hands of co-trustees, see *Speight* v. *Gaunt*, L. R. 9 A. C. 1; *Robinson* v. *Harkin*, [1896] 2 Ch. 415; *Wynne* v. *Tempest* (1897), W. N. 43; *Re Second East Dulwich, &c. Building Soc.*, 68 L. J. 196; *Wyman* v. *Paterson*, [1900] A. C. 271; and *Shepherd* v. *Harris*, [1905] 2 Ch. 310. In addition to the protection afforded to trustees by the Act of 1925, sect. 8 of the T. A. 1888, enables them to plead the Statute of Limitations, subject to certain restrictions; and, by sect. 61 of the T. A. 1925, the Court may relieve them in regard to breaches of trust where they have acted honestly and reasonably, and ought fairly to be excused. As to the necessity of the trustee fulfilling all three requirements in order to obtain relief, see *National Trustees Co. of Australasia* v. *General Finance Co. of Australasia*, [1905] A. C. 373 (P. C.).

(*g*) See sect. 44 of the L. P. A. 1925, which reverses the rule in *Patman* v. *Harland* (1881), 17 Ch. D. 353.

TRUSTEE CLAUSES.

operate if and so long as the number of trustees for the time being shall be more than ——.

Power for trustees to employ solicitors, agents, &c. (*h*).

10. [My trustees may, in their uncontrolled discretion, instead of acting personally, employ and pay a solicitor or any agent or other person to transact all or any business, or do any act of whatever nature required to be done in the premises, including the receipt and payment of money, and shall be entitled to be allowed and be paid all charges and expenses so incurred, and shall not be answerable for the default of any person so employed or for any loss occasioned by his employment].

Professional trustee may charge for services.

11. [And further], the said [*name*], or any trustee of this my will, being a solicitor (*i*) or other person engaged in any profession or business, may be so employed or act, and shall be entitled to and be paid all usual or proper professional or other charges for any business or act done by him or his firm in the premises, whether in the ordinary course of his profession or business or not, and although not of a nature requiring the employment of a solicitor or other professional person (*k*).

Power for trustee resident or going abroad to delegate his authority (*l*).

12. [If at any time when any sale, purchase, or other dealing, matter, or thing relating to the sale, conversion, administration, or management of the trust premises, or the execution of any of the trusts or powers of this my will, shall be pending or in prospect, any trustee for the time being of this my will shall be travelling or residing, or intending to travel or reside abroad [*or*, in some country other than the country wherein the property to

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(*h*) This clause may be omitted in reliance on T. A. 1925, s. 23.

Solicitor legatee.

(*i*) As to this provision making the solicitor a legatee, see *Re White*, [1898] 2 Ch. 217. The benefit of the provision will be forfeited if the solicitor attests the will: *Re Barber*, 31 Ch. D. 665; *Re Pooley*, 40 Ch. D. 1.

(*k*) As to the importance of these words, see *Re Chalinder and Herrington*, [1907] 1 Ch. 58. As to the right of a co-trustee to taxation of the costs of a solicitor trustee, as a "party chargeable under sect. 37 of the Solicitors Act, 1843," see *Re H. P. Davies & Son*, [1917] 1 Ch. 216.

(*l*) This power is given by sect. 25 of the T. A. 1925, but when the statutory provisions are valued the power of attorney has to be filed at the Central Office together with a statutory declaration.

be sold, converted, administered, or managed shall be situate, or the trusts or powers are to be executed] such trustee may, by writing under his hand, with the consent in writing of his co-trustee or co-trustees, delegate to such co-trustee or to all or any one or more of such co-trustees who shall for the time being be resident in England [*or*, in the country wherein such property shall be situate, or such trusts or powers are to be executed], the execution of all or any of the trusts and powers of this my will, and may by powers of attorney or otherwise authorise such co-trustee or co-trustees to execute, make, and do, or concur in executing, making, and doing all such deeds, instruments, payments, receipts, acts, and things relating to any of the trusts, powers, or provisions of this my will, without being accountable or responsible for any loss occasioned thereby: PROVIDED ALWAYS, that no purchaser or person dealing with any trustee or trustees purporting to act under such delegation or authority as aforesaid shall be bound or concerned to inquire whether occasion for such delegation or authority has arisen or is likely to arise, or as to the propriety, regularity, or sufficiency thereof, or whether or not the same is at the time of such dealing valid and subsisting]. TRUSTEE CLAUSES. Protection to purchasers, &c.

13. I REQUEST my trustees, but without imposing any obligation on them, to employ and take the professional advice and assistance of my friend [*name*], of, &c., solicitor, in all matters relating to the trusts of my will wherein they may require professional assistance. Advice.

14. I DECLARE that in case a difference of opinion should exist among my trustees for the time being in regard to any of the trust affairs, or any act, matter, or thing proposed to be done in relation thereto, or in case, by reason of illness, infirmity, or temporary absence abroad, or for any other reason, the formal concurrence of any trustee in such act, matter, or thing cannot conveniently be obtained, the opinion and determination of the majority of the same trustees shall be conclusive, and the acts and proceedings of the majority of my trustees shall, for all the purposes of this my will, be deemed to be and be taken as the acts and proceedings of the whole or entire body of the same trustees, any rule of law or equity to the contrary notwithstanding. Trustees to be bound by the majority.

TRUSTEE CLAUSES.

Power to the trustees to determine questions concerning the construction and administration of the will;

15. My TRUSTEES shall have full power and authority to apportion blended trust funds and to determine the amount of any deductions or allowances to be made in respect of any alleged advancement or loan by me in my lifetime to any of my children, and what articles pass under any specific bequest herein contained, and what moneys are to be treated as or are to be payable out of capital or income, and by whom and in what manner valuations are to be made for any purpose in the opinion of my trustees necessary or expedient for the carrying into effect of any of the trusts, powers, or provisions of this my will or any codicil hereto, and generally to determine all questions or matters of doubt which shall arise in the execution of the trusts of this my will or any codicil hereto (*m*): AND I declare that every such determination, whether made upon a question actually raised or implied in the acts of my trustees, shall be binding on all persons interested under this my will or any codicil thereto.

Power to compound debts, &c.

16. My TRUSTEES [The trustees or trustee for the time being of my said trust property in the colony of —— hereinbefore devised in trust for sale and conversion] may, in their [or his] absolute discretion, allow, pay, compromise, compound, enforce, waive, accept, or give real or personal security for, or give time without taking any security for, or refer to arbitration, any debts or demands whatsoever which may be owing from or to, or be made upon or against or in behalf of my estate [in the colony aforesaid], whether the same be legally enforceable or not, and upon such evidence as they [or he] shall think sufficient (*n*).

Proviso as to remitting proceeds of

17. PROVIDED ALWAYS, and I hereby declare that the said [*colonial trustees*], or other the trustees or trustee for the time

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(*m*) This will not oust the jurisdiction of the Court where the question is to the identity of a charitable institution to which a legacy is given by the will: *Re Raven*, [1915] 1 Ch. 673.

(*n*) The above clause is now no longer necessary in ordinary cases, similar powers being given by sect. 15 of the T. A. 1925. It might, however, be properly inserted in a will relating to property in a colony or other country where similar powers are not implied by the law there. It might also be advisable, where required, to give a *special* executor such powers and expressly to exclude the general executors from exercising their statutory powers in respect of property of which a special executor is appointed: see *post*, p. 624, Form 9.

TRUSTEE CLAUSES.

being of my property in [*colony*] aforesaid hereinbefore devised and bequeathed to them in trust for sale and conversion shall from time to time remit the proceeds of such sale or conversion, and also the rents, profits, and income of and arising from such parts of the same property as for the time being shall remain unsold or unconverted to the said [*English trustees*], or other the general trustees or trustee of this my will to be received, held, and applied by such last mentioned trustees or trustee, upon the trusts, and with and subject to the powers and provisions hereinbefore declared and contained concerning my residuary estate.

sale, &c. of property in a colony.

18. My TRUSTEES may exercise or concur in exercising all powers and discretions hereby or by law given to them, notwithstanding that they or any of them may have a personal interest in the mode or result of exercising any such power or discretion [but any trustee being so personally interested in any matter may abstain from acting therein except as a formal party, and leave his co-trustees or co-trustee to act alone in the exercise of such powers and discretions in relation to such matter].

Power to trustees to act though personally interested (*o*).

MISCELLANEOUS CLAUSES.

1. I DECLARE that if the trustees or trustee of the settlement, dated, &c., executed on my marriage, have heretofore committed, or shall hereafter commit, any breach or breaches of trust with my express or implied consent, such trustees or trustee shall be fully indemnified against all liability in consequence thereof out of my residuary estate.

Indemnity to trustees of testator's marriage settlement in respect of breaches of trust.

2. IF WITHOUT the consent in writing of my executors, which they shall be at liberty to grant or refuse, any person shall dispute

Condition against opposing probate (*a*).

(*o*) This clause should not be inserted in a will without express direction from the testator: *Re Sykes*, [1909] 2 Ch. 241, at p. 247.

(*a*) This condition, in the case of personal estate, is held to be void and *in terrorem* only (*Powell* v. *Morgan*, 2 Vern. 90), unless there is a gift over (*Cleaver* v. *Spurling*, 2 P. Wms. 526; *Stevenson* v. *Abington*, 11 W. R. 935); but in the case of real estate the condition may be valid without a gift over: *Cooke* v. *Turner*, 15 M. & W. 727; but see Jarman, 6th ed. 1549. See, further, as to such conditions, *Re Williams*, [1912] 1 Ch. 399; *Re Raven*, [1915] 1 Ch. 673; *Re Smith*, [1916] 1 Ch. 369.

MISCELLANEOUS CLAUSES.

the validity of this my will, or any codicil hereto, or shall refuse to confirm the same, if required so to do by my executors, such person shall forfeit all benefits hereby, or by any codicil hereto, given to him or her, and every such benefit not being residue, or a share of residue, shall fall into my residuary estate, or being residue or a share of residue, shall, with any addition accruing thereto under this provision, go to the other person or persons entitled to such residuary estate, as if the person incurring such forfeiture had not been included in the residuary gift.

Declaration that provision made for wife is upon condition of her giving up life interest under her marriage settlement;

3. THE SAID annual sums or yearly rentcharges of £——, and £——, hereinbefore limited to my said wife during her life, and widowhood respectively, are so limited upon condition that she shall, at her own costs and charges, within the period of —— calendar months next after my decease, by such ways or means as by my trustees shall be required, surrender, or otherwise release or dispose of her life interest, under the settlement executed on our marriage, in the several sums of stock in the same settlement mentioned, so that the income of the same several sums of stock may from time to time, during the life of my said wife, be received and enjoyed by the person or persons who would for the time being have been entitled thereto in case she were then dead.

in case of her neglect to do so after notice, the rentcharges to cease.

AND I hereby expressly declare, that, in case my said wife shall refuse or neglect to make and execute such surrender or release within the period aforesaid, and should persist in such refusal or neglect for the further period of —— days after a demand or request in writing, delivered to my said wife or left for her at her last or usual place of abode, by my trustees, then, from and immediately after the expiration of the said period of —— days, the said annual sums or yearly rentcharges respectively hereinbefore limited to my said wife, or such of them as shall be then subsisting, shall absolutely cease and determine, notwithstanding that my said wife shall or may, at any time thereafter, be willing and desirous to make and execute, or actually shall make and execute such surrender or release as aforesaid, any rule of equity to the contrary notwithstanding (*d*).

Remarks upon conditions requiring perform-

(*d*) If a testator really intends to make compliance with the condition a *sine quâ non*, the intention should be placed above the possibility of misconstruction, by explicit declaration, as in the text, since points of this

MISCELLANEOUS CLAUSES.

Devisee to produce title deeds.

4. PROVIDED ALWAYS, and I declare, that all title deeds and muniments of title relating to the said hereditaments at ——, hereinbefore devised to my said son [*elder son*], are to be delivered to him upon the express condition that he do, within three calendar months after demand thereof in writing by my said son [*younger son*], or his successors in title, execute and deliver to my said son [*younger son*], or his successors in title, at the equal expense of both parties, a covenant or statutory acknowledgment and undertaking for the production and delivery of extracts from and copies of such of the said deeds and muniments as relate also to the said hereditaments at ——, devised to my last-mentioned son, such covenant or acknowledgment and undertaking to be in the usual form and to be settled, in case of dispute, by the counsel for or solicitor of my said son [*younger son*], or his successors in title; in default whereof I give the said title deeds and muniments of title to my said son [*younger son*], and his successors in title.

Advancements in testator's lifetime to children or grandchildren to be deducted from their shares (*e*).

5. ALL SUMS of money or other property which I have given or settled or covenanted, or agreed to give or settle, or which I may hereafter give or settle or covenant, or agree to give or settle, unto or upon any child or grandchild of mine for placing him or her in any profession, trade, or business, or for or towards his or her marriage portion, or otherwise for or towards his or her advancement or benefit, shall, in default of any direction to the contrary in writing under my hand, be taken in or towards satisfaction of the portion or share hereby given and provided for such child or

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nature have occasioned much litigation: see *Clavering* v. *Ellison*, 7 H. L. C. 707; *Langdale* v. *Briggs*, 8 De G. M. & G. 429; *Hervey-Bathurst* v. *Stanley*, 4 Ch. D. 272. See also, as to the importance of the gift over in default of compliance with the condition, *Cleaver* v. *Spurling*, 2 P. Wms. 526; *Simpson* v. *Vickers*, 14 Ves. 341; *Tulk* v. *Houlditch*, 1 Ves. & B. 248; *Burgess* v. *Robinson*, 1 Mad. 172. ance of an act by devisee or legatee.

(*e*) See *ante*, p. 513, note (*e*). As to references in will or codicil to advances appearing in books of account, see *In re Deprez*, [1917] 1 Ch. 24. Where a testator directed that advances by way of loan were to be "taken in full or part satisfaction (as the case may be)" of benefits given by the will, it was held that the liability of the legatee in respect of such advances was released, and that the debts were to be brought into account as ordinary advances: *Re Trollope*, [1915] 1 Ch. 853; but cf. *Re Barker*, [1918] 1 Ch. 128.

MISCELLANEOUS CLAUSES.

grandchild respectively, and shall be brought into hotchpot and accounted for accordingly.

Advancements in testator's lifetime to be brought into account.

6. I DIRECT, that such sums of money as I have or shall have applied for the benefit of any of my children or grandchildren, to the amount at any one time of £—— or more, shall be taken in part satisfaction of the legacies hereby provided for him, her, or them; [AND in case such advancements to any legatee should exceed the amount of his or her legacy, the surplus shall be brought into hotchpot by such legatee in the distribution of my residuary estate, before he or she shall be entitled to share therein].

Advancement not to be in satisfaction of portions.

7. I DECLARE, that such advancements as I may make to any of my children [*or*, said nephews and nieces] shall be in addition to and not in satisfaction of any legacy or legacies, portion or portions, or other benefit given to him, her, or them by my will.

Pecuniary legacy to trustees in lieu of estate devised on trust, if sold by testator.

8. PROVIDED ALWAYS, that if, at the time of my death, I should have conveyed away my said estate called ——, or any part thereof, my trustees or trustee for the time being shall invest the sum of £——, or a proportionate part thereof, to be ascertained by them or him in such manner as they or he shall, in their or his absolute discretion, think fair and proper, upon trusts corresponding with the trusts hereinbefore declared concerning the same estate as an equivalent.

Power to testator's partner to wind up partnership affairs without interference of executors (*f*).

9. I EMPOWER my said son [*name*], to receive the credits of our said partnership firm, and in his discretion to settle, adjust, and wind up the accounts and transactions thereof, without any interference on the part of my other executors hereinbefore named, whom I hereby expressly exclude from all participation in, or control under any statutory or other powers or otherwise over, or liability in respect of such credits, accounts, and transactions; AND I empower my said son to adjust, settle, waive, suspend, take personal or other security for or compound any accounts, claims, and demands whatever, in respect of, or which may be made by or on behalf of or against, the said partnership, and that

(*f*) For a form of appointment of special executors of partnership shares or business, see *ante*, p. 463, Form 8.

MISCELLANEOUS CLAUSES.

upon such evidence, whether strictly legal or not, as he shall deem sufficient; AND I direct that my said son [*name*], after paying or providing for the debts owing by the said partnership firm, shall from time to time account for and pay over to my executors, my part or share in the net or clear proceeds of the credits received by him as aforesaid.

Direction as to lapse of charges on lands.

10. I DECLARE, that, in case any annuity or legacy herein directed to be paid out of any real estate, or any charge upon or limited interest in any real estate hereinbefore created or limited, should fail by being void by lapse or by any other means, such failure shall be for the benefit of the person or persons to whom such real estate is herein given, subject to such charge or limited interest.

Proviso against lapse of general or residuary gift (*g*).

11. [*Devise of realty and personalty to one person,* ante, *p.* 544, *Form 5b.*] AND I declare, that if the said [*devisee*] shall die in my lifetime, whether leaving issue or not, the devise and bequest hereinbefore made to him shall not lapse, but in such case my said [residuary] real and personal estate shall go to and vest in his personal representatives as part of the real and personal estate of the said [*devisee*] respectively, as if he had been living at, and died immediately after my death.

Proviso against lapse of children's shares of residue where the gifts are to them by name (*h*).

12. IF ANY of my said children shall die in my lifetime without leaving issue living at my death, then the share hereinbefore given to him or her so dying in the said residuary trust premises shall sink into the said trust premises, and be held and applied by my trustees for the benefit of my other children in the like manner as if the child so dying had been originally excluded from sharing in the said trust premises.

General provision against lapse.

13. IF ANY legatee be now dead, or shall have died before me, I give the legacy intended for him or her to his or her personal

(*g*) For forms of bequest of pecuniary legacies so as to prevent lapse, see *ante,* p. 501.

(*h*) See, as to lapse of shares of residue, *Re Parker,* [1901] 1 Ch. 408; *Re Palmer,* [1893] 3 Ch. 369; *Re Allan,* [1903] 1 Ch. 276; *Re Wand,* [1907] 1 Ch. 391; *Re Dunster,* [1909] 1 Ch. 103; *Re Whiting,* [1913] 2 Ch. 1; *Re Wilkin,* [1920] 2 Ch. 6.

MISCELLANEOUS CLAUSES.

representatives, to be applied as if the same had formed part of the personal estate of such legatee at his or her death.

Provision where legatee or legatee's husband or parent is indebted to testator (*i*).

14. I DECLARE, that no legatee under my will or any codicil thereto shall be entitled to receive his or her legacy (of whatever nature the same may be), until he or she shall have first paid to my executors all moneys owing from such legatee to me; AND that no legacy hereby given to any female, who shall be married at my death or before the same is paid or transferred, shall be payable or transferable in case she or her husband, or his representative in the event of his decease, should stand indebted to me or my estate, until such debt or debts shall be paid by such husband or his representative; AND that, where any legacy is directed to go to the children of any legatee in case of his or her death in my lifetime, such children shall take subject to first paying all debts due and owing to me from the parent or parents of such children.

Proviso as to time at which legacies are to be payable (*k*).

15. I DIRECT that all the pecuniary legacies bequeathed by this my will or any codicil hereto (unless otherwise expressly directed), shall be payable within —— calendar months after my death, and if not then paid shall bear interest as from that time until payment at the rate of —— per cent. per annum.

(*i*) See, as to this, *Re Briant*, 39 Ch. D. 471.

When legacies are payable;

(*k*) General pecuniary legacies, where no time is fixed for payment, are payable at the end of one year from the testator's death, though the executor may, if he think proper, pay them at an earlier period; and the same rule applies to general legacies of stock in the public funds (the transfer of which cannot be called for till the end of a year from the testator's death), but not to specific legacies of stock: *Davies* v. *Fowler*, L. R. 16 Eq. 308.

and carry interest.

The general doctrine is that legacies carry interest only from the period when they become payable: *Wood* v. *Penoyre*, 13 Ves. 326; *Pearson* v. *Pearson*, 1 Sch. & L. 10. Generally, therefore, interest on legacies does not begin to run until the expiration of one year from the testator's death (*Lord* v. *Lord*, L. R. 2 Ch. at p. 789), and the effect of directing payment to be made at an early period after the testator's death is to accelerate the legatee's claim to interest: *Lord Londesborough* v. *Somerville*, 19 Beav. 295. A legacy to the testator's wife forms no exception to the general rule: *Re Whitaker*, 21 Ch. D. 657; *Re Bignold*, 45 Ch. D. 496; *Re Crane*, [1908] 1 Ch. 379. See, further, as to interest on general legacies, Theobald on Wills, 7th ed. pp. 187 *et seq.*

MISCELLANEOUS CLAUSES.

16. THE DEATH duties payable in respect of the several annuities and legacies given by my will or any codicil thereto, as well specific as pecuniary, and as well for any limited interest as absolutely, shall be paid out of the residue of my personal estate and effects; AND, in case the residue of the moneys to arise from my said personal estate and effects should be insufficient for the payment of the same annuities and legacies and the duty thereon, the deficiency shall in such case only be a charge upon and payable out of the moneys to arise from the sale of my said real estate.

Death duties to be paid out of residue; charge of legacies on realty.

17. I DIRECT that all the annuities and legacies given by my will or any codicil thereto be paid free of death duties.

Annuities and legacies to be free of duty (*l*).

18. NOTWITHSTANDING any rule of law or equity to the contrary my funeral and testamentary expenses and debts, including interest on debts accrued due from me at my death, and all instalments of any principal money payable out of my estate, shall, as between the persons entitled hereunder in possession and reversion respectively to the said trust premises [*or*, "my residuary estate"], or any part thereof, be charged to and payable exclusively out of capital, and all interest on such debts as from my death, and all annuities, yearly rents, and other periodical payments payable out of my estate (not being instalments of principal money), shall be charged to and payable out of income.

Clause to exclude the rule in *Allhusen* v. *Whittell* (*m*).

PRECEDENTS.

I. WILL *giving the* WHOLE *of the* TESTATOR'S PROPERTY *to his* WIFE.

THIS IS THE LAST WILL of me, [*testator*], of, &c. I devise and bequeath all the real and personal property what-

(*l*) See *ante*, p. 515, note (*f*).

(*m*) Under the rule laid down in *Allhusen* v. *Whittell*, L. R. 4 Eq. 295, and *Lambert* v. *Lambert*, 16 Eq. 320, applied to real estate in *Marshall* v. *Crowther*, 2 Ch. D. 199, each payment on account of funeral expenses, debts and legacies, as between tenant for life and remaindermen, is to be taken as having been paid not out of capital only, but with such portion of the capital as, with the income of that portion, is sufficient to meet such payment: see *Re McEuen*, [1913] 2 Ch. 704; *Re Wills*, [1915] 1 Ch. 769.

As to rule in *Allhusen* v. *Whittell*.

I. WHOLE OF PROPERTY TO WIFE.

soever and wheresoever, to which I may be entitled, or over which I have any disposing power at the time of my death (*a*), unto my wife, [*name*], absolutely. I appoint my said wife to be sole executrix of this my will.

In witness whereof I have hereunto set my hand, this —— day of —— (*b*).

Attestation (*short form*).

Signed (*c*) by the said [*testator*] [with his mark], in the joint presence (*d*) of us, who, in his presence, and in the presence of each other, have hereunto set our hands as witnesses. } [*Two Witnesses.*]

(*a*) As to what words will be deemed to be a sufficient reference to a special power authorising an appointment, see *Re Teape's Trusts*, L. R. 16 Eq. 442; *Re Batchellor* (1886), W. N. 64; *Re Mayhew*, [1901] 1 Ch. 677; *Kent* v. *Kent*, [1902] P. 108; *Re Weston's Sett.*, [1906] 2 Ch. 620; *Wrigley* v. *Lowndes*, [1908] P. 348; *Re Lane*, [1908] 2 Ch. 581; *Re Ackerley*, [1913] 1 Ch. 510; *Re Mackenzie*, [1917] 2 Ch. 58; and see also Theobald, 7th ed., p. 248.

(*b*) As to what is a signature at the foot or end of a will, see Theobald, p. 30.

Attestation of wills.

(*c*) As to attestation, see Wills Act, 1837, ss. 9 and 10. As to wills made out of the Kingdom by a British subject, see Wills Act, 1861. This form of attestation expresses with precision all the formalities of execution which are requisite to the validity of a will. The longer form given at the end of the next precedent is, however, more generally used.

If the will is signed by "some other person" (see Wills Act, 1837, s. 9), say,

"Signed by [*amanuensis*], with the name and as the will of the said [*testator*], in his presence and by his direction, in the joint presence of us, &c."

The amanuensis should sign the testator's name. He may be a witness. The attestation must not be by a beneficiary under the will, otherwise he will forfeit the benefit (Wills Act, 1837, s. 15), unless the will is afterwards confirmed by a codicil not attested by him: *Anderson* v. *Anderson*, L. R. 13 Eq. 381; *Re Trotter*, [1899] 1 Ch. 764; see Robbins & Maw, 4th ed. 320.

(*d*) As to the meaning of "presence" in sect. 9 of Wills Act, see *Brown* v. *Skirrow*, [1902] P. 3.

As to the application of the legal presumption *omnia præsumuntur rite esse acta* in the absence of evidence as to the execution of a testamentary document containing no attestation clause, see *In the Goods of Frances Peverell*, [1902] P. 205; *In the Estate of Strong*, [1915] P. 211.

II. WILL *giving a* LEGACY *to a* MARRIED NIECE, *and* DIRECTING *a* LEGACY *to be* APPROPRIATED *or* PURCHASED *for an* ONLY DAUGHTER *and her* HUSBAND *successively for* LIFE, *and then for* DAUGHTER'S CHILDREN. RESIDUE *of* REALTY (*if any*) *and* PERSONALTY *to* TESTATOR'S WIFE.

II. PERSONALTY: LEGACY FOR DAUGHTER AND CHILDREN.

[*COMMENCEMENT*, *p.* 460, *Form* 1.]

1. [*Appointment of executors, p.* 461, *Form* 1.]

2. [*Specific bequests, pp.* 470 et seq.]

3. I BEQUEATH to my niece, [*name*], the wife of [*husband*], the sum of £—— for her sole and separate use (*e*). Legacy for separate use of niece.

4. [*Other pecuniary bequests, pp.* 495 et seq.]

5. I BEQUEATH to the said [*trustees*] £—— Two and a Half per Cent. Consolidated Stock, to be retained, appropriated, or purchased by them out of my personal estate within three calendar months after my death, and to be held upon the trusts hereinafter declared concerning the same; AND I direct that the death duties payable on the said sum of £—— Consolidated Stock, shall be paid out of my residuary personal estate. Bequest of stock to trustees.

6. MY TRUSTEES shall stand possessed of the said £—— Consolidated Stock hereinbefore bequeathed (*f*), upon trust to pay the income thereof to my daughter, [*name*], during her life, without power of anticipation; AND after the death of my said daughter, [*name*] [upon trust to pay the said income to her surviving husband (if any), during his life; AND after his death] to stand possessed of the said trust fund and the future income thereof, in trust for such child or children of my said daughter, [*name*], by her deceased [*or*, her present, or any future] husband, as (being a son or sons) shall attain the age of twenty-one years, or (being a daughter or daughters) shall attain that age or marry under that age; PROVIDED ALWAYS, that the child or children of any son of my said daughter, [*name*], who shall die under the

in trust for testator's daughter for inalienable use; after her death, for surviving husband (if any) and then the capital for children of daughter;

substitution of children of sons

(*e*) A legacy should be given to the separate use of a married woman, notwithstanding the Married Women's Property Act, 1882, s. 5, if it is wished to prevent the legacy from being subject to a covenant to settle after-acquired property, other than property given for her separate use, contained in a marriage settlement executed before 1883: *Re Stonor's Trusts*, 24 Ch. D. 195; *Re Whitaker*, 34 Ch. D. 227. Separate use.

(*f*) There is no power to vary investments. If the testator had intended to give such a power, he would have bequeathed, not a specific sum of stock to be appropriated or purchased, but a sum of money to be invested.

II. PERSONALTY: LEGACY FOR DAUGHTER AND CHILDREN.

age of twenty-one years, shall be entitled, and if more than one, equally, to the share in the said trust fund to which such son would have been entitled if he had attained the said age. And in case there should be no child or grandchild of the said [*daughter*] who shall acquire a vested interest in the said trust fund or any part thereof, then in trust for such person or persons as my said daughter, [*name*], whether covert or sole, shall by any deed or will or codicil appoint; And in default of and subject to any such appointment, in trust for the person or persons who, at the time of the death of my said daughter, would be entitled to her personal estate in case she had then died intestate and without leaving a husband, in the like shares and proportions as such persons (if more than one) would be entitled thereto.

dying before majority; in default of issue, in trust for such persons as daughter shall appoint; and in default of appointment, for her next of kin (*g*).

7. [*Advancement clause (if desired), p. 579, Form 7.*]

8. [*Residue of real (if any) and personal estate to wife absolutely, p. 543, Form 1.*]

9, &c. [*Trustee clauses, p. 618, Forms 10 and 11.*]

Testimonium.

In witness whereof I have hereunto set my hand this —— day of ——, and I have also set my hand to each of the [*six*] preceding sheets (*h*) of this my will.

[*Testator's Signature*] (*i*).

Attestation.

Signed by the said [*testator*], as his last will, in the presence of us, present at the same time, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses (*j*).

[*Two Witnesses.*]

(*g*) See, as to the necessity for this clause, *Re Lambert's Estate*, 39 Ch. D. 626.

(*h*) If the testator's strength is likely to fail, he should sign the last sheet and have it attested before he attempts to sign the other sheets, which is not essential. The witnesses usually sign only the last sheet.

(*i*) As to signature and attestation where the will is signed by an amanuensis, see *ante*, p. 628, note (*c*).

Attestation of a will containing alterations.

(*j*) If the will contains interlineations or erasures (which latter should be made with a pen, so as to show how the will originally stood), add—"the said testator having, before signing the same, caused the words, '[*interlined words*],' to be inserted between the fourth

III. WILL *giving the* WHOLE *of the* TESTATOR'S REAL *and* PERSONAL PROPERTY *to* ONE PERSON, *with* SUBSTITUTION *of his* CHILDREN *or* ISSUE.

III. REALTY AND PERSONALTY TO ONE, WITH SUBSTITUTION OF CHILDREN.

I, [*testator*], of, &c., hereby revoke all wills and testamentary dispositions heretofore made by me, and declare this to be my last will: I appoint [A. B.], of, &c., to be sole executor of this my will: I devise and bequeath all the real and personal property to which I may be entitled, or over which I may have any disposing power, at the time of my death, to the said [A. B.] absolutely. But if the said [A. B.] should be dead at my death, I appoint [*executors*], of, &c., to be my executors and trustees; AND [subject to the payment of my funeral and testamentary expenses and debts] I devise and bequeath the said real and personal property to the child or children of the said [A. B.] living at my death, and the child or children then living of such child or children of the said [A. B.] as may be then dead, absolutely, in equal shares, and so that the child or children of a deceased child shall take only such share as his, her, or their parent would have taken if living (*k*).

Appointment of executors.

General devise and bequest to A. B.;

If A. B. be dead, appointment of executors and trustees, and gift, subject to debts, to children of A. B. as tenants in common.

IN WITNESS, &c.

IV. WILL *of a* MARRIED WOMAN *under a* POWER (*l*) *in her* MARRIAGE SETTLEMENT *in favour of her* HUSBAND.

THIS IS THE LAST AND ONLY WILL of me, [*testatrix*], wife of [*husband*], of, &c. In exercise of the power contained in an indenture, dated, &c., being the settlement executed on my marriage with my said husband, and of every other power me hereunto enabling, I direct and appoint that the trustees or trustee

Appointment under power, of income to husband for life; capital to children [except eldest son];

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and fifth lines of the third page; and the words, '[*erased words*],' to be erased from the ninth and tenth lines of the same page; and the words, '[*substituted words*],' to be interlined in lieu thereof."

(*k*) As to the effect of a devise of land to two or more persons in undivided shares, see sect. 34, sub-sect. (3), of the L. P. A. 1925; and for a definition of the "statutory trusts" (upon which such land would be held), see sect. 35 of the same Act.

(*l*) The will made during coverture by a married woman under a power to appoint by will during coverture was held to be a good exercise of the power though the testatrix was discovert at her death: *Re Illingworth*, [1909] 2 Ch. 297; *Re Safford's Settlement*, [1915] 2 Ch. 211.

IV. WILL OF MARRIED WOMAN.

in default of children to husband absolutely.

for the time being of such settlement shall pay the income of the trust funds therein comprised and thereby subjected to my appointment to my present (*m*) husband, during his life; And, after his death, shall transfer the said trust funds to such child or children of mine [other than my said son, [*name*]] as shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age or marry if more than one in equal shares [*add, if authorised, substitutionary gift to issue of deceased children, as in p.* 571, *Form* 19]; And, if there should be no such child, [or remoter issue] who shall live to attain a vested interest under the appointment hereinbefore made then the said trustees or trustee shall transfer the said trust funds unto my present husband, his executors, administrators, or assigns. And I devise, bequeath, and appoint all other real and personal property whatsoever and wheresoever, of or to which I shall be possessed or entitled, or over which I shall have any power of disposal at my death, unto my said husband, his heirs, executors, or administrators, absolutely: And I appoint my said husband sole executor of this my will.

Gift of all other property to husband absolutely.

In witness, &c.

V. WILL *of a* Widower *with* Four Children, *containing* Specific *and* Pecuniary Bequests, *and* Specific Devise *of* Lands *in* Mortgage. Residuary Real *and* Personal Estate *to be* Converted, *and the* Produce Divided *into* Four Shares *for* Benefit *of* Two Sons *and* Two Daughters (One Married, *the other an* Infant). Provision *against* Improvidence *of* Younger Son (*n*).

[*COMMENCEMENT, p.* 460, *Form* 1.]

1. [*Appointment of executors and trustees, p.* 462, *Form* 3.]

(*m*) So far as it affects property which would not go to the heir or personal representative of the testatrix in default of appointment, the will would not be revoked by a subsequent marriage: Wills Act, 1837, s. 18.

(*n*) It will be convenient to set out the provisions of this will in paragraph form, and quite easy to do so, since the common forms intended to be incorporated in this precedent are, for the most part, framed on the assumption that they will be contained in numbered and consecutive paragraphs.

2. [*Appointment of grandson as special executor of mortgage debt, p.* 463, *Form* 9.]

3. [*Specific bequests, p.* 470 et seq.]

4. [*Household effects to be divided among children, p.* 474, *Form* 18.]

5. [*Bequest to daughter of debt owing on her husband's bond, p.* 483, *Form* 40.]

6. [*Bequest of mortgage debt to grandson, p.* 483, *Form* 41.]

7. [*Pecuniary legacies, p.* 495, *Form* 1 et seq.]

8. [*Direction as to time for raising legacies, p.* 515, *Form* 46.]

9. [*Legacies to be free of duty, p.* 515, *Form* 45.]

10. [*Direction to purchase annuity for servant, p.* 519, *Form* 1.]

11. [*Bequest of stock in the funds to trustees in trust for nephew for life, and then for his issue, p.* 521, *Form* 1.]

12. [*Specific devise to son of land in mortgage* cum onere, *except as to arrears of interest, p.* 537, *Form* 10.]

13. [*Residuary devise and bequest to trustees, p.* 544, *Form* 56.]

14. [*Trust for conversion, with power to postpone, p.* 546, *Form* 1.]

15. [*Application of income until conversion, p.* 547, *Form* 2.]

16. [*Trusts of proceeds for payment of debts, &c., p.* 547, *Form* 3.]

Trusts of residue:

17. My trustees shall hold the residue of the moneys to arise from the sale, calling in, and conversion of my residuary estate, upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the same.

one-fourth for eldest son absolutely;

18. As to one equal fourth part or share of the said residuary moneys, my trustees shall hold the same in trust for my said elder son, [*name*], absolutely; And if he shall die in my lifetime, whether leaving issue or not, the said one equal fourth part or share shall go to his personal representatives as part of his estate.

remaining three-fourths to be invested for benefit of other children and their issue.

19. As to the three remaining equal fourth parts or shares of the same residuary moneys, my trustees shall, at their discretion, invest the same respectively in their names [or under their legal control], in or upon any of the stocks, funds, or securities hereby authorised, with power at the like discretion to vary such investment into or for others of a nature hereby authorised.

20. As to one of such remaining equal fourth parts or shares of the said residuary moneys and the investments thereof, my trustees shall pay the income thereof to my younger son, [*name*],

V. VARIOUS TRUSTS FOR CHILDREN.

unless and until, &c. [*continue as on p. 565, Form 6a, substituting the words* "such last mentioned part or share" *for* "the trust fund"].

21. FROM AND after the death of my said younger son, my trustees shall hold such last mentioned part or share and the future income thereof, upon trust, &c. [*continue as on p. 564, Form 5d.*]

22. [*Trust in default of children of younger son, p. 564, Form 5e.*]

23. AS TO one other of such remaining equal fourth parts or shares as aforesaid, my trustees shall pay the income thereof to my elder daughter, [*name*], during her life, but without power of anticipation during any coverture.

24, 25, 26. AND FROM and after the death of my said daughter [*then for her husband for life; and then for her issue as she shall appoint, and, subject thereto, for children of elder daughter at twenty-one or marriage, &c., as on p. 573, Form 24, c, d, e, substituting the words* "elder daughter" *for* "sister," *and* "such last mentioned part or share" *for* "the same moiety of the said trust fund."]

27. IF NO child of my said elder daughter, [*name*], shall live to acquire a vested interest in such daughter's share [*ulterior trusts, p. 558, Form 3g.*]

28. AS TO the last one other of such remaining equal fourth parts or shares as aforesaid, my trustees shall hold the same, and the income thereof, upon trust for my younger daughter, [*name*], absolutely, subject, nevertheless, as is next hereinafter provided.

29. PROVIDED ALWAYS, &c. [*power for trustees to settle younger daughter's share if she shall marry when under twenty-one years, p. 591, Form 32.*]

Proviso against lapse of an aliquot share in residue.

30. IF MY said younger daughter, [*name*], shall die in my lifetime without leaving issue, then the one equal fourth part or share hereinbefore given to her of the said residuary moneys, and the investments for the time being representing the same and the income thereof, shall be held by my trustees, upon the trusts, and with and subject to the powers and provisions hereinbefore declared concerning the other three equal fourth parts or shares of the same moneys and investments respectively as if the same proceeds had hereby been originally divided into three equal parts or shares for the benefit of the several persons entitled to or interested in

such three equal fourth parts or shares respectively, or such of the same trusts, powers, and provisions as shall at the time of my death be subsisting and capable of taking effect.

31. [*Investment clauses, pp.* 351 *to* 354.]

32, 33 & 34. [*Trustee clauses, pp.* 615 *et seq., Forms* 8, 10, 11, 15 *and* 18.]

In witness, &c.

VI. WILL *of* Widower Appointing *among* Children *by* Name Equally, *and* Directing *that* Advancements *are not to be* Brought *into* Hotchpot. Bequest *of* Annuity *to* Mother, *&c.* Gift *of* Residue *to* Surviving Children Equally.

[*COMMENCEMENT, p.* 460, *Form* 1.]

1. In exercise of the power given to the survivor of my wife, [*name*], and myself in our marriage settlement dated, &c., I now, having survived her, hereby appoint all the funds and property remaining subject to the trusts of the said settlement unto and among my four children, [*names*], in equal shares; Provided always, and I hereby direct and declare, that my said son, [*name*], shall not be liable to bring the sum of £—— already advanced to him or for his benefit into hotchpot: [*Appointment of executors with substitution in case of their not acting, p.* 462, *Form* 5. *Son at twenty-one to be executor with the others, p.* 463, *Form* 6. *Special executor of life policies, p.* 463, *Form* 7. *Appointment of guardian of infant children, with power to appoint a successor, p.* 468, *Form* 24. *Specific bequest of household furniture for daughters while unmarried, p.* 477, *Form* 28. *Specific bequest of policies of life insurance, p.* 482, *Form* 39. *Other specific bequests, pp.* 470 et seq. *Allowance to son during minority, p.* 498, *Form* 10. *Pecuniary bequests, pp.* 495 et seq. *Annuity to mother, and other annuities, pp.* 518 et seq. *Gift of residuary real and personal estate to surviving children equally, p.* 545, *Form* 7] (*o*). [*Trustee clauses, pp.* 614 et seq.]

In witness, &c.

(*o*) It will be convenient to set out these several provisions in paragraph form.

VII. DISTRIBUTION AMONG RELATIONS, &c. BY A CHILDLESS PERSON.

VII. WILL *of an* Unmarried Man *or* Woman. Various Provisions *for* Brothers *and* Sisters. Gift *of* Residuary Real *and* Personal Estate *to* Trustees *as* Tenants *in* Common *for their own* Use *and* Benefit.

[*COMMENCEMENT*, *p.* 460, *Form* 1. *Appointment of general executors*, *p.* 462, *Form* 3. *Bequest of leaseholds to brother A. with limited executorship*, *p.* 464, *Form* 11. *Specific bequests*, *pp.* 470 et seq. *Pecuniary legacies*, *pp.* 495 et seq. *Gifts of annuities to several*, *p.* 520, *Form* 3; *general directions as to annuities*, *p.* 523, *Form* 10. *Gift of settled legacy for benefit of brother B. and his issue*, *p.* 526, *Form* 1.]

Bequest of legacy on trusts for benefit of brothers and sisters, &c.

I bequeath unto the said [*trustees*] the sum of £—— with interest thereon at the rate of 4 per cent. per annum from the day of my death, clear of death duties, and all other deductions, upon trust to invest the same sum in or upon some of the stocks, funds [shares], or securities hereby authorised, with power to vary such investments; And I direct that my trustees shall stand possessed of the said sum of £—— and the investments for the time being representing the same, and the interest and income thereof, in trust, &c. [*trusts for brothers and sisters and their respective issue, either p.* 571, *Form* 22: ibid., *Form* 23: *or p.* 574, *Form* 25. *Bequest of leasehold house and furniture to sister C.* for life, *remainder to her son D. absolutely*, *p.* 532, *Form* 3, mutatis mutandis. *Specific devise to infant nephew E., with gift over in case of his death under twenty-one to nephew F.*, *p.* 535, *Form* 4.]

Gift of residue to trustees absolutely.

I devise and bequeath all my real and personal estate whatsoever and wheresoever not otherwise disposed of by this my will or any codicil hereto unto and among the said [*trustees*], for their absolute use and benefit, in equal shares as tenants in common (*p*). [*Appointment of trustees for purposes of Settled Land Act*, 1925, *p.* 609, *Form* 29. *Investment clauses*, *pp.* 351 et seq. *Trustee clauses*, 614 et seq.]

In witness, &c.

(*p*) As to the effect of this devise of the land, see sects. 34 and 35 of the L. P. A. 1925.

VIII. WILL *of a* SPINSTER; *giving* LEGACIES *to* SERVANTS, *&c.;* CHARITABLE LEGACIES; RESIDUE *among her* FIVE BROTHERS *and* SISTERS; *and* PROVISIONS *for* FAMILY *of* DECEASED BROTHER *by* REFERENCE *to his* WILL.

VIII. WILL OF SPINSTER GIVING BULK OF PROPERTY FOR CHARITABLE PURPOSES.

[*COMMENCEMENT, p.* 460, *Form* 1. *Appointment of executors and trustees, p.* 462, *Form* 3. *Directions as to funeral, p.* 468, *Form* 1 *or* 2. *Specific bequests: wearing apparel to servant, p.* 470, *Form* 1 or 2; *specific articles by reference to schedule, p.* 475, *Form* 21. *Pecuniary bequests: legacies to trustees, p.* 495, *Form* 3; *legacies to servants, p.* 497, *Form* 7; *legacy to a widow to be paid by weekly instalments, p.* 498, *Form* 9. *Charitable legacies, pp.* 516 et seq., *Forms* 49 *to* 55. *Gift of residuary estate to trustees, p.* 544, *Form* 56. *Trust for conversion, p.* 546, *Form* 1. *Application of income pending conversion,* ibid., *Form* 2. *Trusts of proceeds to pay debts, &c., p.* 547, *Form* 3. *Trust for investment of residue, with power to vary investments, p.* 551, *Form* 13.] My trustees shall stand possessed of the said residuary moneys and the investments thereof upon trust for my [*five*] brothers and sisters now living, and for the family (as hereinafter mentioned) of my deceased brother [A. B.], to be divided among them in equal shares (the family of my said deceased brother taking among them a single share only); AND I direct that the share so appropriated to the family of my said deceased brother shall be transferred by my trustees to the trustees or trustee for the time being of the will of my said deceased brother, and be held by such last-mentioned trustees or trustee upon such trusts and with and subject to such powers for investment and variation of investment and for the benefit of [B. B.], widow of my said deceased brother, during her life and widowhood, and after her death or second marriage for the benefit of the child or children of my said deceased brother, or any one or more of them as the said [B. B.] shall appoint, or otherwise in default of appointment, upon and with and subject to such other trusts, powers, and provisions as are in the said will of my said deceased brother contained, with respect to his residuary personal estate and the proceeds and investments thereof. If any of my [*five*] brothers and sisters now living shall die in my lifetime, then such child or children living at my death of every or any brother or sister of mine so dying as being a male or males

Trusts for five brothers and sisters of testatrix, and the family of a deceased brother by reference to his will.

Substitution of issue.

VIII. WILL OF SPINSTER GIVING BULK OF PROPERTY FOR CHARITABLE PURPOSES.

shall attain the age of twenty-one years, or, being a female or females, shall attain that age or marry, shall take the share of the said trust premises which his, her, or their parent would have taken if living at my death; AND such children, if more than one, shall take the same in equal shares: PROVIDED ALWAYS, that in case there shall be no child of my said deceased brother, who shall attain an absolutely vested interest in the share hereinbefore appropriated to the family of my last-mentioned brother (in which event the said share shall after the failure or determination of the trusts hereinbefore declared of the same be retransferred to my trustees); AND also in case as to any of my brothers or sisters so dying hereafter in my lifetime as aforesaid, there shall be no child, or no child who shall attain an absolutely vested interest in the share which his or her parent would have taken if living at my death, then and in any and every such case the share (as well original as accruing under this proviso) whereof the trusts shall so have failed, or so much thereof as shall not have become vested, or been applied under any of the trusts or powers herein contained, or referred to (and as to the said share of the family of my deceased brother, subject and without prejudice to the interest therein of the said [B. B.] during her life or widowhood) shall go over and accrue by way of addition (equally between them if more than one) to the other shares or share of the said trust premises, so that every such addition to any such share may from the period of accruer be held upon and for the same trusts and purposes as the share to which the same shall be added, and may thenceforth devolve together with such share and be considered as forming part thereof. [*Investment clause, p.* 350. *Trustee clauses, p.* 618, *Forms* 10 *and* 11.]

Accruer clause.

IN WITNESS, &c.

IX. WILL *of* WIDOW *giving* SPECIFIC *and* PECUNIARY LEGACIES, *and giving the* RESIDUE *of* REAL *and* PERSONAL ESTATE *to two* SONS *as* TENANTS *in* COMMON.

IX. RESIDUE TO TENANTS IN COMMON.

[*COMMENCEMENT, p.* 460, *Form* 1. *Appointment of two sons as executors, p.* 462, *Form* 3. *Directions as to funeral, p.* 468, *Forms* 1, 2. *Specific bequests, pp.* 470 et seq. *Pecuniary legacies, pp.* 495 et seq.] I devise and bequeath all the residue of my real and personal estate and effects, whatsoever and wheresoever, unto my said two sons, [*names*], for their absolute use and benefit respectively in equal shares as tenants in common (*q*).

Gift of residue.

IN WITNESS, &c.

X. WILL *disposing of* RESIDUARY ESTATE *in favour of the* TESTATOR'S WIFE *and* CHILDREN.

[*COMMENCEMENT, p.* 460, *Form* 1. *Appointment of executors, p.* 462, *Form* 3; *and guardians, p.* 467, *Form* 22 *or* 23. *Specific bequests, pp.* 470 et seq. *Gift of furniture, &c., to wife, p.* 472, *Form* 14. *Immediate pecuniary legacy to wife, p.* 495, *Form* 1. *Legacies to executors, to servants, &c., pp.* 497 et seq. *Pecuniary legacies to children, to be invested, p.* 505, *Form* 32. *Annuity to testator's mother, p.* 518, *Form* 1. *Gift of residue to trustees, p.* 544, *Form* 5*b*. *Trust for conversion, p.* 546, *Form* 1. *Trusts of proceeds of conversion, p.* 547, *Form* 3. *Authority to delay conversion, and declaration as to income, p.* 549, *Form* 9.

(*q*) The effect of this devise and bequest is as follows:—As to the property other than "land," as defined in sect. 205 (1) (ix) of the L. P. A. 1925, the two sons will hold it (subject to their own assent in their capacity of executors) as tenants in common, with power for either of them (as a person interested in a moiety) to apply to the Court for an order for division (sect. 188); as to the land, they will hold it (under sect. 34 (3)) as the personal representatives of the testator (subject to their own powers for purposes of administration) upon the statutory trusts as set out in sect. 35, that is, upon trust for giving effect to their own rights beneficially as tenants in common. The legal estate is thus vested in the two sons in their capacity of personal representatives as joint tenants; but the equitable interest is vested in them as tenants in common. In a simple case, such as the present, there seems to be no reason to depart from the form of devise which was in use prior to 1926.

XI. WILL OF A FARMER.

Trust for investment of residue, with power to vary investments, p. 551, *Form* 13. *Declaration of trusts, p.* 551, *Form* 14; *for wife during widowhood, and then for children, pp.* 554 et seq. *Advancement clause, p.* 579, *Form* 7. *Investment clause, p.* 350, *Forms* 16 et seq. *Power to allot property in respect of shares, p.* 593, *Form* 35 *or* 36. *Power to appoint new trustees, p.* 614, *Form* 21. *Other trustee clauses, pp.* 616 et seq., *Forms* 8, 10, 11, 15, *and* 18.]

IN WITNESS, &c.

XI. WILL *of a* FARMER, *directing his* FARMING BUSINESS *to be* CARRIED ON *until his* YOUNGEST CHILD *attains* TWENTY-ONE *or* MARRIES; *the* PROFITS *and* INCOME *in the meantime for the* MAINTENANCE *of his* WIFE *and* CHILDREN ; LEGACIES *to* CHILDREN *at* TWENTY-ONE *or* MARRIAGE *with consent; when the* BUSINESS *is discontinued,* LIFE ANNUITY *to* WIDOW *and* RESIDUE *to* CHILDREN. *Full* DISCRETIONARY POWERS; DISCRETIONARY POWER *to convert* REAL ESTATE (*r*).

Commencement.

I, [*testator*], of, &c., hereby revoke all wills and testamentary dispositions heretofore made by me, and declare this to be my last will.

Appointment of executors and trustees.

1. I APPOINT my wife [*name*], during her widowhood, and [*names*], and also my son [*name*], when he shall attain the age of twenty-one years, executors and trustees of this my will; AND I direct that if my said son [*name*], shall not attain that age till after my death, the trust property shall, on his attaining that age, be transferred so as to be vested in him jointly with the other trustees or trustee for the time being; AND I declare that the expression "my trustees" shall include my said wife and the said

(*r*) The above precedent embodies in a concise form, and, as far as possible, in untechnical language, a scheme of testamentary disposition, which may be recommended for ordinary use in cases where children are to be provided for without entailing the real estate. The provisions for the testator's wife, and those relating to the real estate, may be omitted, if not required; and the directions for carrying on the farming business may easily be adapted to any other business: see forms of trusts for carrying on a business, *ante*, pp. 486 *et seq.*

[*names*], and my said son if and when he attains the age of twenty-one years, and the survivors and survivor of them, or other the trustees or trustee for the time being of this my will.

Appointment of guardians.

2. I APPOINT my said wife sole guardian of my children during her widowhood, and after her death or marriage my trustees (other than my said son) guardian and guardians of my children, but during the remainder of the life of my said wife, jointly with her (*s*).

3. [*Specific bequests, pp.* 470 et seq.]

Immediate legacy to wife.

4. I GIVE to my said wife the sum of £——, to be paid to her immediately after my death, for present use and for mourning for herself and children.

Legacies to children at twenty-one or marriage with consent; substitution of children of deceased children.

5. I GIVE the sum of £—— to each child of mine who shall survive me and attain the age of twenty-one years or marry with the consent of his or her guardian or guardians.

6. IF ANY of my children shall die before me, I give the sum of £—— unto or equally between or among such child or children of each child of mine so dying before me as shall survive me and attain the age of twenty-one years or marry with the consent of my said wife or, after her death or marriage, of my trustees.

Power to retain legacies for employment in business.

7. MY TRUSTEES may, in their discretion, retain all or any of the legacies hereinbefore bequeathed to my children or their issue, or any part thereof respectively, and employ the same in my farming business for so long a period as my trustees shall think fit, but so that if the payment of any such legacy, or any part thereof, should be delayed beyond the time of vesting, my trustees shall thenceforth pay interest upon such legacy or such part thereof as shall for the time being remain unpaid, at the rate of four per cent. per annum until payment thereof, such interest to be paid quarterly on the usual quarter days.

Gift of realty and chattels real in trust for sale.

8. I DEVISE all my freehold closes of land at ——, in the county of —— aforesaid, and all other (if any) my real property, and I bequeath all that my leasehold farmhouse and farm at —— aforesaid, which I hold of [A. B.], Esquire, under a lease dated, &c., for the residue of the term of —— years from the —— day of ——, and all other (if any) the farm or farms which I may occupy as lessee or tenant at the time of my death, unto my said

(*s*) See, as to this, *ante*, p. 467, note (*f*).

XI. WILL OF A FARMER.

wife and the said [*names*], and my said son if of full age at my decease, upon trust (*t*) to sell the same, and to hold the proceeds of such sale, upon the trusts hereinafter declared of my residuary personal property; but I authorise my trustees, in their absolute discretion, to postpone such sale; AND I declare that my real property shall, until sale thereof, be held upon trust for the respective persons entitled under my will to my residuary personal estate, and, for the like estates and interests, subject to the like powers and in like manner in all respects.

Realty, &c. until sale, to be held on same trusts as personalty.

Power to let, improve, and manage real estate.

9. MY TRUSTEES may let any unsold real or leasehold property at the best rent obtainable, without fine or premium, subject to such covenants as they may think fit, for any term not exceeding twenty-one years from the time of letting, or for mining, building, repairing, or improving purposes, for any period and on any terms; AND may drain, improve, repair, cut and sell timber on, insure from fire, manage and receive the rents of any unsold real or leasehold property; AND may raise any money for payment of my debts and legacies by mortgaging any part of my real estate, and giving to any mortgagee or mortgagees such powers as my trustees shall think reasonable.

Power to mortgage for payment of debts and legacies.

Actual income to be applicable as income.

10. I DECLARE, that the income actually produced by my real and leasehold property shall be applicable as income under my will; but fines and premiums for building or mining leases shall be dealt with as capital.

Authority to carry on farming business and retain farming stock, &c.;

11. I AUTHORISE and request my trustees while any son of mine is under age, or any daughter of mine is under age and unmarried, or for such shorter period as they shall think fit, to carry on my farming business, and for that purpose to retain unsold all or such parts as they shall think fit of my household furniture, plate, household linen, china, books, and other household effects, motor-cars, carriages, carts, waggons, horses, saddles, harness, and garage and stable furniture and effects, and my dairy utensils, implements of husbandry, crops, and live and dead stock; with full discretionary powers as to insurance, alteration, dis-

discretionary powers;

(*t*) If preferred, say,

"upon the statutory trusts for the respective persons entitled," &c.

It is, however, desirable to avoid the use of technical expressions in a will, unless greater precision is thereby gained.

position and increase or diminution of capital or stock, and purchase of stock, employment of bailiffs, servants, and labourers, and their salaries, powers, and authorities, and the extent of personal superintendence to be exercised by my trustees; AND, at the discretion of my trustees, to accept a fresh lease or fresh leases of any leasehold farm or farms I may occupy at my death, or to hire on lease any other farm or farms, on such terms and for such time or times as they may think expedient; AND to take possession of and use in such business any unsold freehold lands and property; AND generally to act in the management of such farming business and to use my real and personal property therein as if they were absolute owners or owner thereof.

power to take new leases of farms.

12. I DIRECT, that the dwelling-house I shall occupy at my death, or such other house as my trustees shall from time to time think fit, together with my household furniture and household effects, or a sufficient part thereof, shall be kept up at the expense of my residuary estate for the residence of my wife during her widowhood, and of my unmarried children, so long as any one of them is under age [*or*, so long as the said business is continued].

Residence and furniture for wife and infant and unmarried children.

13. I DIRECT, that, while the said business is continued, all or such part as my trustees shall think fit of the profits thereof, and my consumable household stores, and the income from my other property, shall be applied for the maintenance of my wife during her widowhood, and the maintenance and education of my children and the issue of any deceased children, in such proportions as my trustees shall think fit; with power for my trustees to allow my wife to receive such profits and income or any part thereof during her widowhood for that purpose, without seeing to the application thereof: AND I direct, that the unapplied profits (if any) of the said business shall be added to the capital of my residuary estate.

Power to apply all or part of profits for maintenance.

Surplus profits to accumulate.

14. SUBJECT TO the foregoing trusts, directions, and powers, my personal estate shall be sold, got in, and converted into money; AND, after payment (subject as is hereinafter provided) of all expenses of and incident to such sale and conversion, and of my debts, funeral and testamentary expenses, and legacies and the death duties on all legacies given by my will or any codicil hereto, the clear surplus of the proceeds of my personal estate, and of

Direction to get in and invest residue of personalty.

XI. WILL OF A FARMER.

such real and leasehold property as shall be sold, shall be invested by my trustees as hereinafter mentioned; the unapplied income thereof to be accumulated and added to the capital until the same is distributed, which distribution is not to take place until the discontinuance of my farming business.

When residue is distributed, fund to be set apart for annuity for wife;

reducible on her marriage;

15. If the said business shall be discontinued during my wife's widowhood, my trustees shall set apart so much of my residuary real and personal property, or the investments thereof producing permanent income, as shall be sufficient to produce the clear yearly sum of £——, and I give the income from such fund to my wife during her widowhood; And, in case she shall marry again, I direct that thereupon the fund so set apart shall be reduced so as to produce the clear yearly sum of £—— only, in which event, I give the yearly income of such reduced fund to my wife during the remainder of her life; And if my wife shall marry before the said business is discontinued, I direct the said yearly sum of £—— to be paid to her from the time of her marriage out of the income of my residuary estate until a fund is appropriated for the same. Provided, that if either of the said appropriated funds should afterwards yield less than the before stated income, the deficiency shall be made up out of the capital; And that such yearly sums given to my wife shall be made good up to the time of her marriage or death respectively by apportionment.

Residue to children [as wife shall by will appoint;

in default] to children at twenty-one or on marriage with consent;

16. Subject to the foregoing provision for my wife, and as to the residue of my personal estate and effects (including the capital of the said appropriated funds after the determination of my wife's interest therein respectively), I give the same [unto such child or children or other issue of mine, for such interests, and in such shares and manner as my wife, whether married or sole, shall by will appoint, so that every appointed interest shall vest before the end of twenty-one years from the death of the survivor of my wife and children; And subject to any such appointment] unto such child or children of mine living at my death, and such child or children then living of any child or children of mine then dead as shall attain the age of twenty-one years or marry with such consent as aforesaid, and if more than one in equal shares, as between or among brothers and sisters; but so that the child or the children collectively of any deceased child of mine shall take only

the share which such deceased child would have taken if living(*u*). But I direct, that any moneys which in my lifetime I may have advanced to or for the benefit of any child of mine shall be allowed for as part of the share of such child or of such child's issue; [AND that no child or grandchild, to whom or to whose issue any appointment shall be made, shall take any benefit under the foregoing gift in default of appointment, without bringing the same into hotchpot or allowing for the benefit of such appointment].

advancements to be allowed for.

Hotchpot.

17. MY TRUSTEES may [with the consent of my said wife during her life] raise and apply for the advancement in life or benefit of any minor not more than one half of his or her presumptive or vested legacy or share.

Advancement (*x*).

18. MY TRUSTEES may sell my farming business, and any property employed therein, to any son of mine, at a valuation, and take his bond or other security for payment of all or part of the purchase-money within —— years, with interest at the rate of —— per cent. per annum till payment; AND may invest any trust moneys in or upon any of the stocks, funds, shares, or securities hereby authorised, and may vary any investments of trust moneys.

Power to sell to son at a valuation;

to invest and change investments.

19. [*Investment clauses*, ante, *pp.* 351 et seq.]

20. MY TRUSTEES may, in their discretion, apportion and allot my real and personal estates, or any parts thereof, among and to the persons entitled thereto, or any of them; AND, if my trustees think fit, for equality of partition, may sell or mortgage the same

Power to apportion realty and personalty among *cestuis que trust*.

(*u*) Or omit the gift of a life income to the wife, and give her a share of the residue—

Variation giving wife an equal share in residue with children in lieu of a life income.

"I give the residue of my personal estates and effects unto my said wife, if she survive me, and such child or children of mine living at my death, and such child or children then living of any child or children of mine then dead as shall attain the age of twenty-one years, or marry with such consent as aforesaid, in equal shares as between or among brothers and sisters, and so that my wife shall take an equal share with any one of her children, but so that the child or the children collectively of a deceased child shall take only the share which such deceased child would have taken if living."

(*x*) See *ante*, p. 635, note (*o*).

XI. WILL OF A FARMER.

or any part thereof, or charge any sum or sums on any part or parts.

Power to appoint new trustees.

21. THE POWER of appointing new trustees of this my will shall be exerciseable by my said wife during her widowhood, and after her death or remarriage by such of my children as shall for the time being have attained the age of twenty-one years.

Power for trustees to charge for professional services (*y*).

22. ANY TRUSTEE, being a solicitor, or auctioneer or appraiser, or other professional person, may give advice and transact business in relation to the trusts, and charge for the same as if he were not a trustee.

IN WITNESS, &c.

XII. WILL *of a* TRADER, *a* MARRIED MAN. DIRECTIONS *for* CARRYING *on* TRADE.

COMMENCEMENT, *p.* 460, *Form* 1. *Appointment of wife and other executors and trustees*, *p.* 462, *Form* 4. *Appointment of guardians*, *p.* 467, *Form* 22. *Specific bequests*, *pp.* 470 et seq. *Use of house and furniture, &c. to wife for life*, *p.* 475, *Form* 23. *Power for trustees to carry on business, with option to testator's sons successively to take it over*, *p.* 488, *Forms* 4 *and* 5. *Pecuniary legacies*, *pp.* 495 et seq. *Gift of residue to trustees*, *p.* 544, *Form* 5*b*. *Trust for sale and conversion of residue*, *p.* 546, *Forms* 1 *and* 2. *Trust of proceeds to pay debts, &c.*, *p.* 547, *Form* 3. *Trust for investment of residue, with power to vary investments*, *p.* 551, *Form* 13. *Declaration of trusts of residue*, *p.* 551, *Form* 14. *Trusts of residue for wife for life for maintenance of herself and children, and then for children, with settlement of shares of daughters*, *pp.* 557 et seq., *Form* 3. PROVIDED ALWAYS, and I hereby declare, that the trust or obligation hereinbefore imposed on my said wife to apply a portion of the gains and profits of trade, or other annual income, for the support and maintenance of my children for the time being, shall not implicate my trustees in any responsibility respecting the application thereof, nor shall the same extend to any son or sons of mine

Proviso, explanatory of trust for maintenance.

(*y*) The fuller power contained in Form 11, *ante*, p. 618, is better for general purposes: see note (*k*) to that form.

after he or they respectively shall have attained the age of twenty-one years or shall have married, or to any daughter of mine after she shall have married, nor for any longer period than she shall be willing to reside with my said wife, it being my intention merely to provide my daughters with a home, and not to support a separate establishment for them. [*Advancement, p.* 579, *Form* 7. *Investment clauses, pp.* 351 et seq. *Power to appoint new trustees, p.* 646, *clause* 21; *and other trustee clauses, pp.* 616 et seq., *Forms* 8, 10, 11, 16, *and* 18.]

IN WITNESS, &c.

XIII. WILL *of a* PARTNER. BEQUEST *of* SHARE *in* BUSINESS *to* TRUSTEES, *upon trust to* REALISE *the same, with* POWERS *to settle* ACCOUNTS, *and to leave* CAPITAL *of* SHARE *in* BUSINESS *on* LOAN; PROCEEDS *of* REALISATION *to be as* RESIDUARY ESTATE. USUAL TRUSTS *of* RESIDUE *for* BENEFIT *of* WIFE *and* CHILDREN.

[*COMMENCEMENT, p.* 460, *Form* 1. *Appointment of two sons,* [A. B.] and [B. B.], *executors and trustees, p.* 462, *Form* 3. *Specific bequests, p.* 470.] AND WHEREAS I am a partner in the partnership or firm of ——, carrying on the business of ——, in ——, in the county of ——, under certain partnership articles dated the —— day of ——, [*recite any provision in the articles for winding-up the business after the death of a partner*]: Now I hereby bequeath all my share and interest in the said partnership business and in the real and personal property, assets, capital, stock-in-trade, goodwill, and all trade marks or other rights in connection with such goodwill, credits, profits, and other the effects of the said partnership, and all arrears, profits, and other moneys owing to me by the said firm unto the said [A. B.] and [B. B.], upon trust, that my trustees shall concur with the other persons or person for the time being interested in winding-up the said partnership business, or any other business in which I may be engaged as a partner at the time of my death; AND for that purpose I authorise my trustees to adjust and settle, &c. [*continue as at p.* 493, *Form* 11]: My trustees shall stand possessed of all arrears of gains and profits which shall, upon such adjustment and settle-

Bequest of share in partnership to sons.

Upon trust to realise.

Arrears of profits and proceeds of

XIII. WILL OF A PARTNER WHOSE SHARE IS TO BE REALISED.

realisation to go as residuary personalty.

ment of accounts as aforesaid, be found to be due to my estate, and also of all moneys to arise from the winding-up and realisation of my share in the said business, upon the trusts, and with and subject to the powers and provisions hereinafter declared concerning the proceeds of sale and conversion of my residuary estate, and shall pay and apply all the net gains and profits which shall arise in respect of my share in the said partnership business from and after my death, and during any such postponement of the winding-up of the said business and ascertainment and disposal of my share therein, as if the same were income arising from investments of my said residuary estate. [*Gift of residue to trustees, p.* 544, *Form* 5*b*. *Trust for sale and conversion, p.* 546, *Forms* 1 *and* 2. *Trust of proceeds of sale, &c., p.* 547, *Form* 3. *Trust for investment of residue, with power to vary investments, p.* 551, *Form* 13. *Declaration of trusts of invested residue, p.* 551, *Form* 14. *Trusts for wife during widowhood, then for children, &c., pp.* 554 et seq., *Form* 1. *Investment clauses, pp.* 351 et seq. *Power to appoint new trustees, p.* 646, *clause* 21. *Trustee clauses, pp.* 616 et seq., *Forms* 8, 10, 11, 15, *and* 18.]

IN WITNESS, &c.

XIV. WILL *bequeathing* SPECIFIC *and* PECUNIARY LEGACIES. RESIDUE *for* CONVERSION. INCOME *of* RESIDUE *to* WIFE *during* WIDOWHOOD. RESIDUE *for* CHILDREN: SONS' SHARES *to vest at* TWENTY-FIVE. SETTLEMENT *of* DAUGHTERS' SHARES. VARIATION *by which the* VESTING *of* GRANDSONS' SHARES *is postponed until* TWENTY-FIVE. PROVISION *for* ILLEGITIMATE CHILD.

[*COMMENCEMENT, p.* 460, *Form* 1. *Appointment of executors and trustees, p.* 462, *Form* 3; *and guardians, p.* 467, *Form* 22. *Furniture of a certain value to wife, p.* 474, *Form* 19. *Immediate legacy to wife, p.* 495, *Form* 1. *Legacies to children, including a natural daughter: investment and maintenance; substitution of issue of deceased children, p.* 505, *Form* 32.] AND WHEREAS I have contracted with [*vendor*], of, &c., for the purchase of certain freehold messuages and hereditaments at ——; Now I hereby authorise my trustees either to complete such purchase or relinquish the same, as circumstances, &c. [*continue as at*

p. 587, *Form* 24. *Realty and personalty to trustees, p.* 544, *Form* 5*b*. *Trusts for conversion and investment, &c., p.* 546, *Forms* 1 *and* 2; *p.* 547, *Form* 3; *p.* 551, *Form* 13. *Trusts of residue, to pay income of one moiety to wife during widowhood; and subject thereto in trust for children, sons at twenty-five, daughters at twenty-one or marriage; daughters' shares to be settled on them and their issue, p.* 558, *Form* 4. *Maintenance, p.* 576, *Form* 1. *Power to postpone payment of legacies, p.* 515, *Form* 46. *Investment clauses,* ante, *pp.* 351 et seq. *Power to appoint new trustees, p.* 646, *clause* 21. *Trustee clauses, pp.* 616 et seq., *Forms* 8, 10, 11, 13, *and* 15.]

IN WITNESS, &c.

XV. WILL *giving* REAL *and* PERSONAL ESTATE *in trust for* SALE, *the* PRODUCE *to be invested for the* WIFE *and* CHILDREN. LIFE INTEREST *in one* MOIETY *to the* WIFE. CAPITAL *to* CHILDREN *in* UNEQUAL SHARES. DAUGHTERS' SHARES SETTLED, *with* CROSS LIMITATIONS. LIFE ANNUITIES *to* TESTATOR'S NIECE *determinable on* ALIENATION, *and then to her children.*

[*COMMENCEMENT, p.* 460, *Form* 1. *Appointment of executors and trustees, p.* 462; *and guardians, p.* 467, *Form* 22. *Furniture to wife, p.* 472, *Form* 14, *or p.* 474, *Form* 19. *Other specific legacies, pp.* 474 et seq. *Pecuniary legacies to wife, p.* 495, *Form* 1; *and to trustees, &c., Form* 3; *other pecuniary legacies, pp.* 495 et seq. *Annuities to two sisters and a niece with proviso for cesser on alienation, p.* 521, *Form* 6. *Gift of residue to trustees, p.* 544, *Form* 5*b*. *Trust for sale and conversion, p.* 546, *Forms* 1 *and* 2. *Trusts of proceeds of sale and conversion, p.* 547, *Form* 3. *Trusts for investment of residue, with power to vary investments, p.* 551, *Form* 13. *Declaration of trusts of residue, p.* 551, *Form* 14. *Income of one moiety to wife during widowhood; subject thereto, the entirety for children, sons at twenty-five, daughters at twenty-one or marriage; sons' shares double those of daughters; share of each daughter to be in trust for her inalienable use for life, and then for her children; accruer; power to daughters to bequeath life interests to husbands, &c.; substitution of issue of children dying before the vesting age; on failure*

XV. PRODUCE OF REAL AND PERSONAL ESTATES FOR WIFE AND CHILDREN.

of children, the remaining moiety to wife for life, and, subject thereto, to testator's niece for her life, and then to her children, pp. 558 et seq., *Form* 4. *Power to invest trust moneys in purchase of lands, p.* 551, *Form* 15. *Power to lease land, pp.* 585 et seq. *Investment clauses, pp.* 351 et seq. *Power to appoint new trustees, p.* 646, *clause* 21. *Trustee clauses, pp.* 616 et seq., *Forms* 8, 10, 11, 15, *and* 18.]

IN WITNESS, &c.

XVI. WILL *of a* WIDOWER, *devising* SPECIFIC FREEHOLD ESTATES *in* TRUST *for each of his* THREE DAUGHTERS *respectively for* LIFE, *with* POWER *to appoint* LIFE ESTATES *to their surviving* HUSBANDS, *and a* POWER *of* SELECTION *among their respective* CHILDREN *or more remote* ISSUE. *In default of* APPOINTMENT, *the* ESTATES *so devised in* TRUST *for each* DAUGHTER *to be held for her* CHILDREN *as* TENANTS *in* COMMON *absolutely.* CROSS-EXECUTORY LIMITATIONS *between the several* FAMILIES. *The* RESIDUE *of the* TESTATOR'S REAL *and* PERSONAL ESTATES *to form* ONE FUND, *to be held upon* TRUSTS *similar to the* TRUSTS *limited of the* REAL ESTATES *specifically devised, in such manner as to* COMPENSATE *for any* INEQUALITIES *in the* VALUES *of the* ESTATES *specifically devised.* POWER *of* ADVANCEMENT *out of the* REAL *and* PERSONAL ESTATES.

[*COMMENCEMENT, p.* 460. *Appointment of executors and trustees, p.* 462, *Form* 3. *Appointment of guardians with power to substitute, p.* 468, *Form* 25. *Directions as to funeral, p.* 468, *Forms* 1, 2. *Specific bequests, pp.* 470 et seq. *Legacy to trustees, p.* 495, *Form* 3; *and other pecuniary legacies, pp.* 495 et seq.]

Devise of certain hereditaments to eldest daughter for life.

I devise all my freehold hereditaments at Thorpe, in the county of ——, and my freehold land at Redham, in the same county, purchased of John Wood, with the four cottages thereon, unto my trustees, to hold the same (*b*) upon trust for my daughter

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(*b*) Where a disposition or settlement coming into operation after the commencement of the L. P. A. 1925, contains a trust either to retain or

[*eldest daughter*], during her life, but so that during [her present or any future coverture] the same shall be without power of anticipation. AND, after her death, upon such trusts, for the benefit of any surviving husband of my said daughter, as to all or any part of the said hereditaments and for any period not exceeding the term of his life, as my said daughter shall, by will, notwithstanding coverture or (being unmarried) by deed, appoint. AND, subject thereto, upon such trusts for the benefit of all or any of my said daughter's children or more remote issue (born in her lifetime), as she shall at any time or times by deed, revocable or irrevocable, or by will appoint, but so that no infant and unmarried child or other issue shall take a vested interest under any such appointment in the lifetime of my said daughter. AND, subject thereto, upon trust for such child or children of my said daughter as shall be living at my death, and such child or children of any child or children of my said daughter who shall be then dead as shall survive me, and if more than one, in equal shares as between or among brothers and sisters, but so that the child or the children of a deceased child shall take in equal shares between them only the share which such deceased child would have taken if living. But in case any of such children or grandchildren should die under the age of twenty-one years without leaving issue, then I declare that his, her, or their share or shares (as well under this substitutionary limitation as under the foregoing original limitation), shall be held by my trustees upon the trusts herein limited concerning the other share or shares of the said hereditaments: PROVIDED that no child or grandchild shall take under the foregoing limitation in default of appointment, without bringing into hotchpot or allowing for the benefit of any appointment which shall have been made to him or her or to his or her issue. AND if no child or grandchild of my said daughter should be living after my decease, and attain the age of twenty-one years or die under that age leaving issue, then, subject to any such appointment as aforesaid, as to one moiety of the said hereditaments, upon the trusts, and with the powers hereinafter limited and contained

power to appoint life-interest to husband;

power to appoint among her issue (*c*);

in default of appointment to children and issue of deceased children, with cross-limitations of shares of children dying under twenty-one without issue;

in default of such issue upon similar trusts in favour of other daughters, their husbands, and issue, by reference.

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sell land, the same shall be construed as a trust to sell the land with power to postpone the sale. (L. P. A. 1925, s. 25 (4).)

(*c*) Compare *Hughes* v. *Footner*, [1921] 2 Ch. 208, referred to in *Re Combe*, [1925] Ch. 210, at p. 212.

XVI. SPECIFIC DEVISES: TENANTS FOR LIFE TO REPAIR AND INSURE.

concerning my hereditaments at Weston, purchased of James Watt: AND as to the other moiety thereof, upon the trusts, and with the powers hereinafter limited and contained concerning my hereditaments at Easton, purchased of John Hutton. AND I devise unto my trustees all my freehold hereditaments at Weston, in the said county of ——, which I purchased of James Watt, with the cottages erected thereon, to hold the same upon such or the like trusts, and with such or the like powers in favour of my daughter [*second daughter*], the wife of [*name*], her surviving husband, and her issue, as are hereinbefore limited, expressed, and contained as to my said hereditaments at Thorpe in favour of the said [*eldest daughter*], her surviving husband, and her issue; AND, subject thereto, as to one moiety of the hereditaments lastly hereinbefore devised, I declare that the said moiety shall be held upon the trusts and with the powers hereinbefore limited and contained concerning my hereditaments at Thorpe; AND as to the other moiety thereof, upon the trusts, and with the powers hereinafter limited and contained concerning my hereditaments at Easton, purchased of James Hutton. AND I devise all my freehold hereditaments at Easton aforesaid, which I purchased of James Hutton, unto my trustees, to hold the same upon such or the like trusts, and with such or the like powers in favour of my daughter [*third daughter*], her surviving husband, and her issue, as are hereinbefore limited, expressed, and contained as to my said hereditaments at Thorpe, in favour of the said [*eldest daughter*], her surviving husband, and her issue; AND, subject thereto, as to one moiety of the hereditaments lastly hereinbefore devised, upon the trusts, and with the powers hereinbefore limited and contained concerning my hereditaments at Thorpe; AND as to the other moiety thereof, upon the trusts, and with the powers hereinbefore limited and contained concerning my hereditaments at Weston, purchased of James Watt. AND I direct that each equitable tenant for life, or for any less estate, of any hereditaments, shall, during her or his estate, keep the buildings thereon in good and substantial repair and insured in the names of my trustees, in some respectable office or offices of insurance against damage by fire, to the full value thereof; AND that the moneys to be received under every such insurance shall be applied in reinstating the property in respect whereof the same shall become payable; AND that, if any such person should neglect to

Devise of another estate on similar trusts in favour of second daughter, her husband, and issue;

on failure of such trusts, on similar trusts in favour of other two daughters, their husbands, and issue.

Devise of a third estate upon similar trusts in favour of third daughter, her husband, and issue;

on failure of such trusts, on similar trusts in favour of other daughters, their husbands, and issue.

Tenants for life to repair and insure;

on their

effect such repairs as aforesaid within six calendar months after being thereunto requested in writing by my trustees, or to effect or keep on foot such insurance, or to produce to my trustees, upon demand, the receipt for each premium thereon within fourteen days after the same shall have first become payable, it shall be lawful for (but not incumbent on) my trustees, out of any trust moneys in their hands, to effect such repairs or to effect or keep on foot such insurance, and to deduct the expenses thereof, with interest thereon after the rate of 5 per centum per annum, from any moneys which shall then or afterwards be payable to such person, or to recover such expenses and interest, with all costs incidental to the recovery thereof, by entry upon and perception of the rents and profits of any hereditaments to which such person shall be entitled for any estate or interest, either by original limitation or by appointment under my will.

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default, trustees may repair and insure, and recover costs by distress and entry.

I devise and bequeath all the residue of my real estate and chattels real, and of my personal estate and effects whatsoever and wheresoever, unto my trustees, upon trust thereout, or by means thereof, to pay and satisfy my funeral and testamentary expenses and the legacies given by this my will, or any codicil hereto, and the duties on any legacies given free of duty, and subject thereto, to hold the same subject to the directions and upon the trusts hereinafter declared and contained concerning the same.

Gift of residuary real and personal estate to trustees.

My trustees shall, as soon as conveniently may be after my death, cause the several freehold hereditaments hereinbefore specifically devised, and also my said residuary real and personal estate (subject as aforesaid), to be respectively valued by some competent person or persons, to be appointed for that purpose by my trustees.

Trustees to cause estates specifically devised to be valued.

And my trustees shall set apart such a portion of my said residuary real and personal estates as shall, together with the value (so to be ascertained as aforesaid) of my said hereditaments hereinbefore specifically devised for the benefit, in the first instance, of my said daughter [*eldest daughter*], be equal in amount or value to one equal third part of the total value (so to be ascertained as aforesaid) of all my specifically devised hereditaments and my said residuary real and personal estates taken together; And shall be possessed of such part or portion, upon trusts, and subject to powers corresponding as nearly as may be with the trusts and powers hereinbefore limited and contained

Gift of residuary realty and personalty, for benefit of daughters and their husbands and issue, by reference, in such proportions as to make all their shares under the will of equal value.

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concerning my said hereditaments at Thorpe; And shall set apart such other portion of my said residuary real and personal estates as shall, together with the value (so to be ascertained as aforesaid) of my hereditaments hereinbefore specifically devised for the benefit, in the first instance, of my said daughter [*second daughter*], be equal in amount or value to such equal third part as aforesaid; And shall be possessed of such other portion, upon trusts, and subject to powers corresponding as nearly as may be with the trusts and powers hereinbefore limited and contained concerning my said hereditaments at Weston, purchased of James Watt; And shall be possessed of the remaining portion of my said residuary real and personal estate, upon trusts, and subject to powers corresponding as nearly as may be with the trusts and powers hereinbefore limited and contained concerning my said hereditaments at Easton, purchased of John Hutton. [*Maintenance clause, if desired, pp.* 576 et seq. *Advancement clause, p.* 579, *Form* 7. *Appointment of trustees to be trustees of settlement for purposes of Settled Land Act,* 1925, *p.* 609, *Form* 29. *Provisions extending statutory powers and provisions of Settled Land Act,* 1925, *pp.* 609 et seq. *Trustee clauses, pp.* 614 et seq.]

In witness, &c.

XVII. STRICT SETTLEMENT *of* Two Estates *on* Testator's Two Daughters *respectively and their* Issue, *with* Cross-remainders, *and ultimate* Remainder *to a* Niece *and her* Issue. Term *for* raising Money *for* Debts *and* Legacies. Shifting Limitations. Heirlooms.

Devise of testator's estates in the county of York.

[*COMMENCEMENT, p.* 460, *Form* 1.] I devise all the messuages, farms, lands, tenements, and hereditaments whatsoever in the county of York, of or to which I or any person or persons, in trust for me, am, is, or are seised or entitled for any estate of freehold or inheritance in possession, reversion, remainder, or expectancy, or otherwise howsoever or which I have power to dispose of or appoint by my will (hereinafter called my Yorkshire estates), with their appurtenances and all my estate and interest

therein, unto my trustees, upon the trusts following (that is to say), upon trust for [*trustees of term*], &c. [*Continue as at p.* 596, *Form* 5. *And subject to the term so created, upon trust for elder daughter for life; remainder to her sons successively in tail male; remainder to her sons in tail general; remainder to her daughters in tail male; remainder to her daughters in tail general; remainder to younger daughter and her issue in strict settlement, with corresponding limitations to those for elder daughter; remainder to testator's own heirs, p.* 603, *Form* 15.] The term of —— years hereinbefore limited to the said [*trustees of term*] is so limited to them, upon trust that they the said [*trustees of term*], or the survivor of them, or other the trustees or trustee for the time being of the said term of —— years, shall as soon as conveniently may be after my death, by demising, assigning, mortgaging, selling, or otherwise disposing of the said hereditaments comprised in the said term of —— years, or any of them or any part thereof, for the whole or any part of the same term, or out of the rents and profits of the same hereditaments or any of them, or by any other means raise any such sum or sums of money as the trustees or trustee of such term shall, in their or his discretion, think fit for the payment of my funeral and testamentary expenses and debts, and the legacies given by this my will or any codicil hereto, and shall pay or apply such moneys in or towards the payment or satisfaction and discharge of my said funeral and testamentary expenses, debts, and legacies.

Trusts of term for raising money for payment of debts and legacies (*e*).

[*Devise of estates in Lincolnshire upon trusts similar to those of Yorkshire estates*, mutatis mutandis; *limitations to younger daughter and her issue in strict settlement; remainder to elder daughter and her issue in strict settlement*, ut ante, *p.* 603, *Form* 15, mutatis mutandis, *adding before ultimate remainder to testator's heirs limitations to testator's niece by name and her issue in strict settlement.*]

Devise of Lincolnshire estates.

It shall be lawful for each and every or any of my said daughters and niece respectively, either before or after she shall become actually entitled to the possession or receipt of the rents and profits of the estates hereby settled or either of them. [*Continue as at*

Power to daughters and niece to appoint rent-charges to husbands for life.

(*e*) See also power to raise money for these purposes by mortgage, *ante*, p. 592, Form 34.

XVII. STRICT SETTLEMENT: SHIFTING CLAUSES.

p. 608, *Form* 24, *saying:* "to be issuing out of or charged upon all or any part of such estates respectively." *Clause reducing estates in tail male and in tail of persons born in testator's lifetime to estates for life; reduction not to apply to children* en ventre sa mère, *p.* 600, *Form* 12.]

Power to such persons to limit rentcharges to husband or wife.

I declare that any and every such tenant for life, being a female, shall have the same or the like power of limiting or appointing one or more yearly rentcharge or rentcharges unto or in favour of any husband surviving her as is or are hereinbefore reserved to my daughters and niece respectively: And I further declare that it shall be lawful for any and every such tenant for life, if a male, either before or after he shall become entitled to the actual possession or to the actual receipt of the rents and profits of the same hereditaments, but subject and without prejudice [*continue as at p.* 608, *Form* 23].

PROVIDED ALWAYS, that neither my Yorkshire estates nor my Lincolnshire estates, nor any part thereof respectively, shall by virtue of the respective powers hereinbefore contained [*continue clause limiting amount of rentcharges, p.* 609, *Form* 26].

Proviso shifting Lincolnshire estate in case of its becoming united with the Yorkshire estate in a child of the younger daughter.

[*Direction to devisees to assume testator's name and arms, p.* 605, *Form* 21]: PROVIDED ALSO, and I further declare, that if by reason of the failure of issue of the said [*elder daughter*] entitled or inheritable under the limitations hereinbefore contained, any child of the said [*younger daughter*] or any issue of any such child should for the time being, under the limitations hereinbefore contained, of the said hereditaments in the said county of York, be tenant in tail male or in tail general in possession of the same hereditaments, and should at the same time, under the limitations hereinbefore contained, of the said hereditaments in the said county of Lincoln, be tenant in tail male or in tail general in possession of the said last mentioned hereditaments, and there should then be living any other child of the said [*younger daughter*] or any issue of any such other child, then and so often as the same shall happen, the estate in tail male or in tail general in possession, which the person so in possession under the limitations hereinbefore contained shall be seised of or entitled to, of or in the said hereditaments in the said county of Lincoln, and also any estate in tail general to which, under the limitations aforesaid, any such person may happen to be entitled in the same hereditaments in remainder immediately expectant on his or her estate

in tail male in possession therein, shall cease and determine; But I declare that if, by virtue of this proviso, my said estates in the said county of Lincoln should have shifted from any child of the said [*younger daughter*] or any issue of any such child, and there should afterwards be a failure of issue of the other child or of all the other children (if more than one) of the said [*younger daughter*], then and in that case my said estates in the said county of Lincoln shall return, be, and remain to such child, from whom or from whose issue the same shall have so shifted in tail male with remainder to such child in tail general, with such remainders over as are hereinbefore limited, expressed, or contained of or concerning the same [*Proviso shifting the Yorkshire estate, in the event of its becoming united with the Lincolnshire estate in a child of the elder daughter. Repeat preceding form, substituting* "younger" *daughter for* "elder" *daughter and* vice versâ, *and substituting* "Lincoln" *for* "York" *and* vice versâ].

[*Furniture, &c., as heirlooms, p.* 613, *Form* 33.]

I devise and bequeath all the residue of my real and personal estate whatsoever and wheresoever unto and between my daughters in equal shares absolutely as tenants in common (*f*).

[*Appointment of executors and trustees, p.* 462, *Form* 3. *Appointment of trustees of will to be trustees for purposes of Settled Land Act,* 1925, *p.* 609, *Form* 2*d*; *with provisoes extending the powers given by the Settled Land Act,* 1925, *pp.* 609 et seq. *Trustee clauses, pp.* 616 et seq.].

IN WITNESS, &c.

XVIII. WILL *of* REALTY *and* PERSONALTY. TOWN HOUSE *for* WIFE'S RESIDENCE. REALTY *to* SONS *successively in* STRICT SETTLEMENT; *in default of such* ISSUE *to be* SOLD *for* BENEFIT *of* DAUGHTERS. HEIRLOOMS. LEGACIES *to* CHILDREN *and their* ISSUE. RESIDUE *of* PERSONALTY *for* WIFE, *and then for* ISSUE *as she shall appoint; in default,* EQUALLY. POWER *to* SETTLE PART *of* DAUGHTER'S LEGACIES.

[*COMMENCEMENT, p.* 460, *Form* 1. *Appointment of executors and trustees, p.* 462, *Form* 3; *and guardians, p.* 467, *Form* 22.

(*f*) As to the effect of this devise of the real estate, see sects. 34 and 35 of the L. P. A. 1925; see also sect. 36 of the S. L. A. 1925.

XVIII. REALTY AND PERSONALTY: WIFE AND CHILDREN.

Immediate legacy to wife, p. 495, *Form* 1. *Furniture, &c., "other than the chattels hereinafter bequeathed as heirlooms" to wife during widowhood, p.* 475, *Form* 23. *Bequest of leasehold house in trust for wife's residence; subject thereto, to be sold, p.* 532, *Form* 4. *General devise of freeholds following, p.* 595, *Form* 1.]

Real estate for first and other sons and their issue in strict settlement.

Upon trust for my eldest son, [*name*], during his life, without impeachment of waste; with remainder to the first and every other son of my said son, [*name*], successively, and in remainder one after another in tail male; with remainder to each of my other sons during his life, without impeachment of waste; with remainder to the first and every son successively of each such other son, in remainder one after another in tail male, so that the elder of my said other sons, and his first and other sons, and the heirs male of their respective bodies successively, may be preferred to and take before the younger of my said other sons, and his and their first and other sons, and the heirs male of their respective bodies; AND after the determination or failure of the several interests hereinbefore limited as aforesaid, upon trust that my trustees shall, as soon as conveniently may be thereafter, sell the said real estates hereinbefore devised to them in trust as aforesaid.

In default of such issue, direction to trustees to sell said real estates.

Proceeds of sale to be divided among testator's daughters, &c.

Substitution of issue of deceased daughters.

My trustees shall stand possessed of the net proceeds of such sale, upon trust to pay or divide the same unto or among such of my daughters as shall be living at the time of my death and at the death of the survivor of my said sons, and such failure of issue male of their respective bodies as aforesaid, if more than one in equal shares; AND if any of my daughters should die before the death of the survivor of my said sons and such failure of issue male of their respective bodies as aforesaid (whether in my lifetime or after my death), leaving one or more child or children living at her death, and who shall be living at the death of the survivor of my said sons and such failure of issue male as aforesaid (*g*), and shall attain the age of twenty-one years, then I direct that such child or children of every such daughter shall be entitled to such share of the said trust moneys as his, her, or their deceased parent

(*g*) This bequest, although not to take effect until after an indefinite failure of issue, is valid; the persons, the failure of whose issue is to entitle the legatees, being devisees in tail. The gift, therefore, notwithstanding its remoteness, does not transgress the rule against perpetuities: *Heasman* v. *Pearce*, L. R. 11 Eq. 522; 7 Ch. 275.

would have been entitled to if living at the death of the survivor of my said sons and such failure of issue male as aforesaid, and that such share shall be divided between or among such children if more than one in equal shares. [*Chattels as heirlooms, p.* 613, *Form* 33. *Legacy to trustees upon trust to invest and hold investments upon trust for inalienable use of married daughter for life, after her death for her issue as she shall appoint, and in default of appointment for her children and children of her sons dying under twenty-one equally; hotchpot clause; in default of issue, as daughter shall generally appoint, in default of appointment for daughter's next of kin; power to advance portions, pp.* 526 et seq., *Form* 2 (*or substitute for daughter's general power and trust for next of kin the following:* Upon trust to pay, apply, and transfer the said settled legacy fund in such manner and to and for such trusts and purposes as are herein declared with respect to the residue of my personal estate): *Legacy among testator's other children; nomination in equal shares; substitution of issue of children dying before testator; clause of accruer as to shares of children dying in testator's lifetime or under age, pp.* 507 et seq., *Form* 33. *Advancement clause, p.* 579, *Form* 7. *Power to trustees to settle shares of daughters marrying under age, p.* 591, *Form* 32. *Residue of personalty to trustees, p.* 544, *Form* 5*b*. *Trust for conversion, p.* 546, *Form* 1. *Trust of proceeds, p.* 547, *Form* 3. *Trust for investment, with power to vary investments, p.* 551, *Form* 13. *Declaration of trusts of invested residue,* ibid., *Form* 14. *Trusts for wife for life, then for children or issue as she appoints; in default for children equally, p.* 556, *Form* 2.] And if there shall be no child of mine who shall acquire a vested interest in the said residuary trust fund under the trust in default of appointment hereinbefore contained, my trustees shall stand possessed of the said residuary trust fund, upon trust [*continue as at p.* 553, *Form* 1. *Appointment of trustees of will to be trustees for purposes of Settled Land Act,* 1925, *p.* 609, *Form* 29. *Investment clause, pp.* 351 et seq. *Trustee clauses, pp.* 614 et seq.]

In witness, &c.

XIX. STRICT SETTLEMENT.

XIX. REAL ESTATE *in* STRICT SETTLEMENT. USUAL CLAUSES. RESIDUE *to* CHILDREN *generally*.

[*COMMENCEMENT*, p. 460, *Form* 1. *Appointment of executors*, p. 462, *Form* 3. *Devise of realty upon trusts declared*, p. 595, *Form* 1. *Upon trust for first and other sons and their issue male in strict settlement; remainder to daughters concurrently and their issue male in strict settlement, with cross remainders; remainder to testator's children concurrently in tail general, with cross remainders*, p. 602, *Form* 14. *Tenants in tail born in testator's lifetime made tenants for life*, p. 599, *Form* 12. *Powers to charge jointures and portions*, p. 607, *Form* 23. *Legacies to unmarried daughters*, p. 529, *Form* 5. *Legacies to younger sons*, p. 505, *Form* 30. *Residuary personalty to children*, p. 545, *Form* 7. *Appointment of trustees of settlement for purposes of Settled Land Act*, 1925, p. 609, *Form* 29. *Extension of powers and provisions of Settled Land Act*, 1925, pp. 609 et seq. *Trustee clauses*, pp. 614 et seq.]

IN WITNESS, &c.

XX. WILL *of a* LANDED PROPRIETOR. BEQUEST *of* LEASEHOLDS. ACCUMULATION *of* RENTS. FREEHOLDS *in* STRICT SETTLEMENT. RESIDUARY PERSONALTY *for* YOUNGER CHILDREN.

[*COMMENCEMENT*, p. 460, *Form* 1. *Appointment of executors and trustees*, p. 472, *Form* 3. *Of guardians*, p. 467, *Form* 22. *Specific legacies*, pp. 470 et seq. *Pecuniary legacies*, pp. 495 et seq. *Bequest of leaseholds to trustees upon trusts to pay ground rent, &c.; in trust for son at twenty-one; if no son, for daughter; if no daughter, for wife; accumulation of rents during minority*, p. 532, *Form* 4. *Devise of freeholds*, p. 595, *Form* 1. *And subject to rentcharge, to wife*, p. 596, *Form* 4; *in strict settlement*, p. 600, *Form* 13. *Jointuring, and other powers*, p. 607, *Form* 23, *and* p. 608, *Form* 24. *Wife to give up interest under marriage settlement*, p. 622, *Form* 3. *Residuary bequest of personalty to trustees*, p. 544, *Form* 5b; *in trust for conversion, &c.*, pp. 546, 547, *Forms* 1 *and* 3; *and invest-*

ment, with power to vary investments, p. 551, *Form* 13. *Declaration of trusts,* ibid., *Form* 14. *Trusts of residuary personalty for all children except eldest son or child taking the real estates, p.* 568, *Form* 13. *Appointment of trustees of the will to be the trustees for the purposes of the Settled Land Act,* 1925; *and extension of powers of Settled Land Act,* 1925, *pp.* 609 et seq. *Investment clauses, pp.* 351 et seq. *Trustee clauses, pp.* 614 et seq.]

In witness, &c.

XXI. WILL *devising* Realty *to an* Only Son *and his* Issue *in* Strict Settlement.

[*COMMENCEMENT, p.* 460, *Form* 1. *Appointment of son executor, p.* 461, *Form* 1. *Devise of realty upon trusts declared, p.* 595, *Form* 1. *Son for life, p.* 596, *Form* 6. *Remainder to his first son and other sons in tail, p.* 598, *Form* 9. *Remainder to his daughters in tail as tenants in common, p.* 603, *Form* 16.]

Power to testator's son to appoint pin-money to and to jointure any wife.

It shall be lawful for my said son, by deed revocable or irrevocable, or by will or codicil, to appoint to any and every woman whom he may marry (and that either before or after such marriage), for her life, or for any less period, by way of pin-money and jointure respectively, any yearly rentcharge or rentcharges, not exceeding £—— in the whole by the year, free from all deductions, to be charged upon all or any part or parts of the said hereditaments hereby devised in settlement, and to be payable at such times and in such manner as he shall direct.

Power to testator's son to charge estates with portions for younger children.

It shall be lawful for my said son, by deed revocable or irrevocable, or by will or codicil, to charge all or any of the said hereditaments hereby devised in settlement with the payment of such sum or sums of money as he shall think fit, not exceeding in the whole in the several events hereinafter specified the several sums hereinafter mentioned, as and for the portion or portions of every or any of the daughter or daughters and younger son or younger sons of my said son who shall not be entitled or presumptively entitled to the said hereditaments in remainder immediately expectant on the death of my said son, that is to say, if

XXI. DEVISE TO ONLY SON AND HIS ISSUE, IN STRICT SETTLEMENT.

there shall be only one such child the sum of £——, and if there shall be only two such children the sum of £——, and if there shall be only three such children the sum of £——, and if there shall be more than three such children the sum of £——, such portion or portions to be an interest or interests vested in and to be paid to or shared and divided between or among such child or children, or any one or more of them, at such age or time, or respective ages or times, and with such provisions for maintenance and advancement in the meantime, and if more than one in such shares and proportions, and with such annual sum or sums of money, conditions, restrictions, and limitations over (such annual sum or sums of money and limitations over being for the benefit of one or more such child or children respectively) as my said son shall in manner aforesaid direct; AND ALSO to charge the hereditaments charged with such portion or portions respectively with the payment of such yearly sum or sums of money as he shall think fit, for or towards the maintenance and education of the daughter or daughters and younger son or younger sons for the time being of my said son until her, his, or their portion or respective portions shall become vested and payable, so as the same do not exceed the interest of such his, her, or their portion or respective portions, or presumptive or expectant portion or respective portions, after the rate of 4 per centum per annum, and by deed, will, or codicil, to appoint for any term or terms of years, to any person or persons with or without impeachment of waste, the said hereditaments so to be charged as aforesaid upon the usual trusts, for securing, raising, and paying such portion or respective portions, and the costs of and incident to raising the same and the execution of the trusts thereof.

Power to charge a gross sum by will.

It shall be lawful for my said son, if there shall be an entire failure of his issue at the time of his death, by his will or any codicil thereto, to charge all the hereditaments hereby devised in settlement, or any part or parts thereof, with any sum or sums of money not exceeding in the whole the sum of £——, with interest thereon at any rate not exceeding —— per cent. per annum, for the benefit of such persons or person, or for such purposes or purpose whatsoever as he shall think fit: AND in manner aforesaid to appoint for any term or terms of years to any person or persons, with or without impeachment of waste, the said hereditaments so to be charged as aforesaid for securing, raising, and

paying such sum or sums respectively, with interest at the rate aforesaid. XXI. DEVISE TO ONLY SON AND HIS ISSUE, IN STRICT SETTLEMENT.

[*Extension of powers under the Settled Land Act*, 1925, *p.* 610, *Form* 31 (*k*). *Personalty to son, p.* 543, *Form* 2. *Trustee clauses, pp.* 614 et seq.]

In witness, &c.

XXII. WILL *disposing of the* Principal Part *of the* Testator's Property *upon the* Trusts *of his* Marriage Settlement.

[*COMMENCEMENT, p.* 460, *Form* 1. *Appointment of executors, p.* 462, *Form* 3 (*l*). *Specific bequests, pp.* 470 et seq.] Heirlooms to go with settled mansion house.

I bequeath my gold and silver plate, and also my collection of paintings in oil, to the said [*executors*], or other the trustees or trustee for the time being of the settlement, dated the —— day of ——, made on my marriage, in trust to permit the same to go and be enjoyed as heirlooms with the mansion house called —— Hall comprised in my said settlement; And, until all the limitations in tail of the said messuage comprised in the said settlement shall fail or be barred, or until the expiration of twenty-one years from the death of the survivor of such of the descendants or issue of my father as shall be living at my death (whichever event shall first happen), I direct that on the death of each person who shall be entitled to the freehold in possession of the said messuage by virtue of the said settlement, the said heirlooms shall go over to and be possessed by the next person on whom such freehold shall devolve by virtue of the said settlement; And on the failure or destruction of the said limitations in tail or the expiration of the said period (whichever shall last happen), I give the said heirlooms to the person who shall then be or last have been entitled to the possession thereof under the trusts aforesaid, absolutely. I give to my nieces, [*names*], each the sum of £——, free of duty, to be paid to them as soon as conveniently may Pecuniary legacies.

(*k*) All or any of the sub-clauses of Form 31 on p. 610, *ante*, can be adopted, as the case may require.

(*l*) The trustees of the marriage settlement at the date of the will should be named as executors and trustees.

XXII. DEVISE AND BEQUEST ON TRUSTS OF SETTLEMENT.

be, with interest at 4 per cent. per annum from the time of my death. I charge my real estates with the payment of my debts in exoneration of my personal estate; AND, subject thereto, I give the same and the residue of my personal estate to the said [*executors*], or other the trustees or trustee for the time being of my said marriage settlement, upon trusts corresponding as nearly as may be to the [uses and] trusts in the said settlement contained concerning the freehold estates thereby settled. AND I appoint the said trustees or trustee to be the trustees or trustee of the settlement hereby created for the purposes of the Settled Land Act, 1925.

General devise and bequest to trustees of marriage settlement.

IN WITNESS, &c.

XXIII. WILL *of a* SOLICITOR. INTEREST *in* PARTNERSHIP BUSINESS, LAW BOOKS, PAPERS, *&c., bequeathed to a* SON (*a* PARTNER).

[*COMMENCEMENT*, *p.* 470, *Form* 1. *Appointment of executors and trustees*, *p.* 462, *Form* 3; *and guardians*, *p.* 467, *Form* 22. *Immediate legacy to wife*, *p.* 495, *Form* 1, *and life interest in furniture, &c.* (*excluding plate*) *to wife*, *p.* 475, *Form* 23. *Plate to children*, *p.* 474, *Form* 18. *Share of law books, office furniture, papers, &c., to son*, *p.* 480, *Form* 32.]

Appointment of testator's partner as special executor of share of testator in partnership.

I appoint my said son, [*name*], to be my sole executor so far only as concerns my share and interest in the business and property of our said partnership: AND I empower [*add power to wind up partnership affairs, &c.*, *p.* 624, *Form* 9. *Residue to trustees*, *p.* 544, *Form* 5*b*. *Trusts of proceeds*, *p.* 547, *Form* 3. *Trust for investment with power to vary*, *p.* 551, *Form* 13. *Declaration of trusts of invested residue*, ibid., *Form* 14. *Disposition of residuary estate in favour of testator's wife and children*, *see pp.* 554 et seq., *Forms* 1 *to* 4, *or as circumstances may require*. *Power to appoint new trustees*, *p.* 646, *Form* 21. *Investment clauses*, *pp.* 351 et seq. *Trustee clauses*, *pp.* 614 et seq.]

IN WITNESS, &c.

XXIV. CODICIL *appointing* ADDITIONAL EXECUTOR *and* TRUSTEE.

XXIV. CODICIL ADDING NEW TRUSTEE.

THIS IS A CODICIL to the will of me, [*testator*], of, &c., which bears date the —— day of ——. WHEREAS, since the date and execution of my said will, my eldest son, [*name*], has attained the age of twenty-one years, Now I hereby appoint him to be a trustee and executor of my will, in addition to [*trustees*], the trustees and executors named therein: AND I declare that my said will and all devises, bequests, powers, and provisions therein contained shall be read and construed in the same manner, and shall have the same operation and effect in all respects, as if the name of the said [*son*] had been in each and every instance throughout the said will added to the names of the said [*trustees of will*], excepting only that my said son shall not take or have any pecuniary legacy for his trouble in the execution of the trusts of my said will (*m*), as he will take valuable beneficial interests under the trusts thereof. AND in all other respects I confirm my said will (*n*).

IN WITNESS, &c.

XXV. CODICIL *appointing a new* TRUSTEE *and* EXECUTOR *in the* ROOM *of a* TRUSTEE *and* EXECUTOR *of the* WILL, *who had* DIED *in* TESTATOR'S LIFETIME.

I [*testator*], of, &c., declare this to be a codicil to my will, bearing date the —— day of ——. WHEREAS, since the date of my said will [*deceased trustee*], of, &c., one of the trustees and executors named therein, has died: Now I hereby appoint my friend [*new trustee*], of, &c., to be a trustee and executor of my said will in the place of the said [*deceased trustee*]. AND I direct and declare that my said will shall be read and construed in the same manner, and shall have the same operation and effect in all respects, as if the name of the said [*new trustee*] had been inserted therein,

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(*m*) An expression of intention on this point seems to be advisable, in order to exclude doubt.

(*n*) As to the effect of the confirmation of a will by a codicil, see *Re Fraser*, [1904] 1 Ch. 726, 734; *Re Park*, [1910] 2 Ch. 322; *Re Aynsley*, [1914] 2 Ch. 422; [1915] 1 Ch. 172.

XXV. CODICIL SUBSTITUTING NEW TRUSTEE.

instead of the name of the said [*deceased trustee*]. And I bequeath to the said [*new trustee*], for his trouble in the execution of the trusts of my said will, the legacy or sum of £——, which by my said will is expressed to be given to the said [*deceased trustee*]. And I declare, that the said legacy shall be payable at the same time and in the same manner as the legacy for which it is substituted. And in all other respects I confirm my said will.

In witness, &c.

XXVI. CODICIL *substituting* Two Persons, *in lieu of those named in the* Will, *as* Trustees *and* Executors.

[*COMMENCEMENT*, *p.* 460, *Form* 2 *or* 3.] I hereby revoke the appointment of [*old executors*] as executors and trustees of my said will, and in lieu thereof, I appoint [*new executor*], of, &c., and [*new executor*], of, &c., to be the executors and trustees of my said will; And I declare that my said will shall be read and shall take effect as if the names of the said [*new executors*], respectively, were written in every part of the said will wherein the names of [*old executors*] occur, in lieu of such last-mentioned names, and as if such last-mentioned names had been struck out from every part of the said will.

In witness, &c.

XXVII. CODICIL *made after* Second Marriage, *confirming the* Will, *giving an* Annuity *to the* Testator's Wife, *and admitting his* Children *by her to* Share *in his* General Estate *with the* Children *provided for by his* Will (*o*).

[*COMMENCEMENT*, *p.* 460, *Form* 2 *or* 3. Whereas, since the date of the said will, I have intermarried with [*wife*]: Now I hereby give to my said wife the annual sum of £——, to be paid to her by equal half-yearly payments, on each —— day of —— and —— day of ——, during her life; with a proportional part

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(*o*) This precedent should not be used without careful consideration of the provisions and language of the will.

thereof in respect of the period between the day of my death and the first of such days. And I declare, that all expressions and gifts contained in my said will, and referring to any child or children of mine otherwise than by name, shall be construed as if I had made the said will, and used the same expressions after my said marriage. In all other respects I confirm my said will, and declare that the same shall operate and be construed, as to persons and things, as if I had made the same on this —— day of ——, 19—.

In witness, &c.

XXVIII. CODICIL *revoking* Legacies *and* Annuities *and bequeathing* Others (*p*).

[*COMMENCEMENT*, *p.* 460, *Form* 2 *or* 3.] I hereby revoke the legacy of £—— given to [A.] by my said will: I bequeath a legacy of £—— to [B.] in addition to the legacy of £—— given to him by my said will: I bequeath the legacy or sum of £—— to [C.]: I revoke the annuity of £—— bequeathed by my said will to my wife [D.] during her life, and in lieu thereof I bequeath to her during her life an annuity of £——, but without power of anticipation during any future coverture, and so long as she shall continue my widow an additional annuity of £——, to commence from my death, such substituted annuities, or such of them as shall for the time being be payable, to be paid at the like times and in like manner as the said annuity of £—— bequeathed to her by my said will and hereby revoked: I bequeath to my sister [E.] an annuity of £—— during her life in addition to the annuity of £—— bequeathed to her by my said will, and to be paid to her at the times and in like manner as such last-mentioned annuity. And in all other respects I confirm my said will.

In witness, &c.

(*p*) A gift of residue by codicil revokes a gift of residue by will: see *Re Stoodley*, [1916] 1 Ch. 242, following *Earl of Hardwicke* v. *Douglas*, 7 C. & F. 795. A substituted legacy is *primâ facie* subject to the same conditions as the original legacy: *Re Backhouse*, [1916] 1 Ch. 65.

XXIX. CODICIL AFTER PURCHASE OF REAL ESTATE.

XXIX. CODICIL *made after the* PURCHASE *of* REAL ESTATES, *with* DIRECTIONS *as to* PAYMENT *of* LEGACIES, *&c.* FREE *of* DUTY.

[*COMMENCEMENT, p.* 460, *Form* 2 *or* 3.] I give and devise all my freehold estates to my trustees in trust, as soon as conveniently may be after my death, to sell and convert the same into money, and to be possessed of the proceeds upon the trusts declared in my will of my general personal estate. I declare that all the annuities and other legacies, whether pecuniary or specific, given by my will shall be paid clear of death duties.

IN WITNESS, &c.

XXX. CODICIL *reviving a* WILL *previously* REVOKED.

[*COMMENCEMENT, p.* 460, *Form* 2 *or* 3.] WHEREAS I [*testator*], of ——, made my said will on the —— day of ——, and have since revoked the same. Now, I hereby annul such revocation, and declare that the said will is valid and subsisting (*q*).

IN WITNESS, &c.

XXXI. ANOTHER FORM *of* REVIVAL.

[*COMMENCEMENT, p.* 460, *Form* 2 *or* 3.] WHEREAS by two codicils, dated respectively the —— of ——, and the —— day of ——, to my said will, I have partially altered the disposition of my property contained in my said will; AND by another codicil thereto, dated, &c., I have wholly revoked my said will, together with the two first-mentioned codicils thereto. Now, I revoke the said codicil of the —— day of ——, and also the codicil of the —— day of —— (*r*); AND I declare my said will, and the codicil thereto, dated the —— day of ——, to be and contain my last will.

IN WITNESS, &c.

(*q*) See sect. 22 of the Wills Act, 1837.

(*r*) These dispositions must be expressly revoked in the revoking codicil itself; they will not be effectually revoked by a statement to that effect in the attestation clause, which is no part of a will or codicil: see *Re Atkinson*, 8 P. D. 165.

Care must be taken that no person who, or whose wife or husband, takes any benefit under the will is allowed to attest the reviving codicil.

XXXII. WILL *reviving a* WILL *revoked by* MARRIAGE (*s*).

I [*testator*], of, &c., declare this to be my last will: WHEREAS I made my will on the —— day of ——, 19—, and have since intermarried with [*wife*]. Now I hereby revive and confirm the said will, and declare that the same shall operate and be construed, as to persons and things, as if I had made the same on this —— day of ——, in the year ——.

IN WITNESS, &c.

XXXIII. SIMPLE REVOCATION *of a* WILL (*t*).

I [*testator*], of, &c., hereby revoke an instrument bearing date, &c., and purporting to be my last will, which instrument I have deposited with [*name*], of, &c.

IN WITNESS, &c.

(*s*) It must be remembered that (apart from the special provision contained in sect. 177 of the L. P. A. 1925, as to a will made in contemplation of a marriage) marriage is not an absolute revocation of every will; for an appointment made in exercise of a power simply collateral will remain unaffected by the marriage: Wills Act, 1837, s. 18. Upon the wording of that section it seems to be clear that an appointment under a power which is followed by a limitation, in default of appointment, to persons who *might* sustain the character of heir or next of kin of the donee, but who are not so described, is within the saving, and would not be revoked by marriage: see *Re Fenwick*, L. R. 1 P. & D. 319.

A revival of a will may be effected with equal efficiency by a memorandum as follows, written at the foot of the will:—

"I hereby revive and confirm the above-written will, and declare, &c."

The memorandum must, of course, be duly attested as any other testamentary instrument.

(*t*) As to the revocation of a will by "burning, tearing, or otherwise destroying," see Wills Act, 1837, s. 20; and see *Jinkin* v. *Cowling*, [1924] P. 113. As to destruction by accident and not *animo revocandi*, see *In re Baron Templemore's Estate* (1925), 69 S. J. 382. As to destruction on a mistaken assumption, see *In re Southerden*, [1925] P. 177.

XXXIV. MEMORANDUM AND RE-EXECUTION OF A WILL.

XXXIV. MEMORANDUM *of* ALTERATION *and* RE-EXECUTION *of a* WILL (*u*).

BE IT REMEMBERED, that I [*testator*], have made in my own handwriting [*or,* caused to be made], in this my will the alterations hereinafter specified; (that is to say), in the twenty-first line of the first page, the words [*words*] are erased, and the words [*words*] are inserted in their stead. The words [*words*] in the seventh line of the second page, and the eighth, ninth and tenth lines of the same page, and the words [*words*] in the eleventh line of the same page, are erased. Between the words [*words*] and [*words*] in the nineteenth line of the same page, the words [*words*] are inserted. I declare the above writing so altered to be my will.

IN WITNESS, &c.

XXXV. MARGINAL ALTERATION *in a* WILL.

FOR (*x*) the words [*words*] through which I have drawn my pen [*or,* which I have caused to be erased], it is my will that the words [*words*] be inserted.

IN WITNESS, &c.

XXXVI. WILL *of* REAL *and* PERSONAL ESTATE *in* ENGLAND *and in a* COLONY.

1. [*COMMENCEMENT, p.* 460, *Form* 1.]

2. I appoint [*executor*], of, &c., and [*executor*], of, &c., executors and trustees of my will, except as regards my real and personal estate in the colony of ——.

3, 4. [*Specific legacies and general legacies.*]

5. *Devise and bequest of residue real and personal,* except the real and personal estate hereinafter devised and bequeathed to

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(*u*) As to alterations in a will, see Wills Act, 1837, s. 21.

(*x*) If the marginal alteration be not written opposite to the part of the will which is intended to be corrected, some mark of reference should be affixed to the passage and a corresponding mark to the marginal correction.

my colonial trustees, to the said [*general trustees*], in trust that they or the survivors of them, or other the trustees or trustee for the time being for the general purposes of my will (hereinafter called "my general trustees"), shall sell, &c. [*trust for sale and conversion, p.* 546, *Form* 1].

6. *Trusts of proceeds for payment of debts, &c.*, "other than the debts owing by me in the said colony, if and so far as the provision hereinafter made for the payment of the same shall be sufficient," *p.* 546, *Form* 3.

7. *Trust for investment of residue with power to vary, p.* 551, *Form* 13.

8. *Declaration of trusts, p.* 551, *Form* 14.

9. *Trust for wife during widowhood and then for children, pp.* 554 et seq.

10. *Advancement clause, p.* 579, *Form* 7.

11. *Ultimate trust in default of children, p.* 556, *Form* 1 (e).

12. *Investment clause, pp.* 351 et seq.

13. *Power to manage real and leasehold estates until sale, p.* 582, *Form* 15*a*; *and add any other powers or provisions relating to the unconverted estate which may be appropriate.*

14. I devise and bequeath unto [*colonial trustees*] (hereinafter called "my colonial trustees"), all my estate and effects, real and personal, situate and being at my death in the colony of ——, including debts and choses in action then recoverable by legal proceedings in the said colony (*y*), upon the like trusts and subject to the like powers and provisions with respect to the sale and conversion thereof and management and leasing until sale (so far as applicable) as are hereinbefore contained with reference to my general estate hereinbefore devised and bequeathed to my general trustees.

15. My colonial trustees shall hold the net proceeds of the sale and conversion of the real and personal estate hereinbefore devised and bequeathed to them and the net rents, profits, and annual income thereof until sale or conversion, after payment thereout of outgoings and expenses of management and realization or otherwise, and any debts owing by me in the said colony, upon trust to remit such net proceeds, rents, profits and income, as and when the same shall

(*y*) See *Re Clark*, [1904] 1 Ch. 294.

XXXVI. WILL OF REAL AND PERSONAL ESTATE.

be received by them, to my general trustees to be held and applied by them upon the trusts and in the manner hereinbefore expressed concerning the proceeds of the sale and conversion of my general estate and the income thereof.

16. The receipt of my general trustees and my colonial trustees respectively for any proceeds of sale or other moneys or property paid, delivered or transferred to them by virtue of this my will, shall be a sufficient discharge to the person or persons paying, delivering or transferring the same therefrom.

17. My general trustees as to my general estate and any moneys or property received by them from my colonial trustees, and my colonial trustees as to property for the time being vested in them hereunder, shall have full power to apportion blended trust funds, &c. [*continue as in Form* 15, *p.* 620].

18. I appoint the said [*colonial trustees*] special executors of this my will as to the real and personal estate hereinbefore devised and bequeathed to them.

19. My acting general executors or executor, and my general trustees as to my general estate, and my acting special executors or executor and my colonial trustees as to my colonial estate, may, in their or his absolute discretion, allow, &c. [*continue power to compromise, &c., as in Form* 16, *p.* 620].

20. My general trustees and colonial trustees respectively, may, &c. [*continue power to employ solicitors, &c., as in Form* 10, *p.* 618; *and for professional trustee*, "whether general or colonial," *to charge for services as in Form* 11, *p.* 618].

21. If any of the trustees hereby appointed shall die in my lifetime, or if and so often as any trustee hereof for the time being shall after my decease die, or desire to be discharged, or refuse or become unfit or incapable to act, or shall reside, being a general trustee, abroad, or being a colonial trustee out of the said colony for more than twelve calendar months, then my wife during her lifetime, and after her decease the surviving or continuing trustees or trustee of the class in which such vacancy or disqualification occurs (and for this purpose a refusing or retiring trustee, if willing to act under this power, shall be considered a continuing trustee), or the acting executors or administrators of the last surviving or continuing trustee of the same class, may appoint a new trustee or new trustees in place of the trustee so dying or

desiring to be discharged or refusing or becoming unfit or incapable to act or residing out of the United Kingdom, or the said colony, as the case may be. AND upon every such appointment the number of trustees may be increased or reduced (but not below two) in each class. AND every new trustee may, as well before as after the transfer of the trust property to the trustees for the time being of the class to which he belongs, execute all the trusts or powers in respect of which he shall be so appointed trustee as well and effectually as a trustee hereby constituted.

22. I devise all my freehold estates vested in me at my death as a trustee or mortgagee in the said colony to the special executors hereinbefore appointed in respect of my estate in the said colony, subject to the trusts and equities affecting the same.

IN WITNESS, &c.

XXXVII. WILL *made in* CONTEMPLATION *of* MARRIAGE (*a*).

THIS IS A WILL AND TESTAMENT of me, ——, of ——, which I make in contemplation of my intended marriage with A. B., of ——, and which is to take effect in the event of my said intended marriage taking effect within —— calendar months (*b*) from the date hereof and not otherwise, and in the event of my said intended marriage being solemnised within the period aforesaid, but not otherwise, I hereby revoke all former testamentary dispositions and declare this to be my last will.

[*Continue will as requisite.*]

(*a*) This precedent, provided for by L. P. A. 1925, s. 177, makes the disposition in favour of the intended wife effective only upon marriage, which the Act omits to do.

(*b*) Under L. P. A. 1925, s. 61, "month" here means "calendar month."

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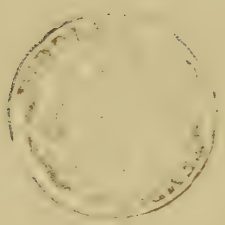
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